

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

Grace Smith, Esq.
Michael O. Smith, J.D.
J.A. Smith (minor child)
203 Dorset Road
Tobyhanna, PA 18466

Plaintiffs

v.

St. Luke's Hospital University
Healthcare Network
Anderson Campus
1872 St. Lukes Blvd.
Easton, PA 18045

Defendant

and

Dr. Teresa Marlino, M.D.
1872 St. Lukes Blvd.
Easton, PA 18045

Defendant

and

Dr. Cynthia M. Shultz, M.D.
1872 St. Lukes Blvd.
Easton, PA 18045

Defendant

and

Dr. Patrick Philpot, D.O.
1872 St. Lukes Blvd.
Easton, PA 18045

Defendant

and

Dr. Dianne R. Jacobetz, M.D.
1872 St. Lukes Blvd.

CIVIL ACTION

NO. _____

Easton, PA 18045	}
Defendant	}
	}
and	}
	}
Dr. Shadi N. Malaeb, M.D.	}
1872 St. Lukes Blvd.	}
Easton, PA 18045	}
Defendant	}
	}
and	}
	}
Dr. Marilyn E. Ekonomidis, M.D.	}
1872 St. Lukes Blvd.	}
Easton, PA 18045	}
Defendant	}
	}
and	}
	}
Dr. Hannah Milthorpe, M.D.	}
1872 St. Lukes Blvd.	}
Easton, PA 18045	}
Defendant	}
	}
and	}
	}
Dr. Beth A. Maisel, M.D.	}
1872 St. Lukes Blvd.	}
Easton, PA 18045	}
Defendant	}
	}
and	}
	}
Dr. Denese Brown, M.D.	}
1872 St. Lukes Blvd.	}
Easton, PA 18045	}
Defendant	}
	}
and	}
	}
Dr. Kimberly A. Costello, D.O.	}
1872 St. Lukes Blvd.	}
Easton, PA 18045	}
Defendant	}
	}
and	}

Dr. Gilberto I. Santiago, M.D.
1872 St. Lukes Blvd.
Easton, PA 18045
Defendant

and

Dr. Chaminie Wheeler, D.O.
1872 St. Lukes Blvd.
Easton, PA 18045
Defendant

and

Ms. Patricia Bates, CRNP
1872 St. Lukes Blvd.
Easton, PA 18045
Defendant

and

Ms. Kimberly A. Bardis, CRNP
1872 St. Lukes Blvd.
Easton, PA 18045
Defendant

and

Ms. Kimberly A. Butz, RN
1872 St. Lukes Blvd.
Easton, PA 18045
Defendant

and

Ms. Lisa Ferro, RN
1872 St. Lukes Blvd.
Easton, PA 18045
Defendant

and

Mr. Steve Lanshe, Esq.
1872 St. Lukes Blvd.
Easton, PA 18045

	Defendant	}
		}
and		}
		}
Mr. Robert L. Wax, Esq.		}
1872 St. Lukes Blvd.		}
Easton, PA 18045		}
	Defendant	}
		}
and		}
		}
Mrs. Darla Frack		}
1872 St. Lukes Blvd		}
Easton, PA 18045		}
	Defendant	}
		}
and		}
		}
Ms. Dawn Hoffman		}
1872 St. Lukes Blvd.		}
Easton, PA 18045		}
	Defendant	}
		}
and		}
		}
Onsite Neonatal Partners, Inc.		}
1000 Haddonfield-Berlin Road., Unit 210		}
Voorhees, NJ 08043		}
	Defendant	}
		}
and		}
		}
Dr. Jerry Hric, M.D.		}
1000 Haddonfield-Berlin Road., Unit 210		}
Voorhees, NJ 08043		}
	Defendant	}
		}
and		}
		}
Anderson Laboratories, Inc.		}
1700 St. Luke's Blvd.		}
Easton, PA 18045		}
	Defendant	}
		}
and		}
		}

Dr. Emily Miller, M.D.	}
1700 St. Luke's Blvd.	}
Easton, PA 18045	}
Defendant	}
	}
and	}
	}
OBHG PA Pennsylvania, PC (OBHG PA)	}
777 Lowndes Hill Rd., Bldg 1.	}
Greenville, SC 29607	}
Defendant	}
	}
and	}
	}
OBHG PA Pennsylvania, PC (OBHG PA)	}
305 W. North St.	}
Nazareth, PA 18064	}
Defendant	}
and	}
	}
Bethlehem Neonatal Associates (BNA)	}
801 Ostrum St.	}
Bethlehem, PA 18015	}
Defendant	}
	}
and	}
	}
St. Luke's Obstetrics and Gynecology	}
Associates	}
487 E Moorestown Rd #106	}
Wind Gap, PA 18091	}
Defendant	}
	}
and	}
	}
County of Monroe	}
One Quaker Plaza	}
Stroudsburg PA 18360	}
Defendant	}
	}
and	}
	}
Ms. Adelaide W. Grace	}
Monroe County	}
Children & Youth	}
730 Phillips St	}

Stroudsburg, PA 18360	}
Defendant	}
	}
and	}
	}
Mr. Tim Shaw	}
Monroe County	}
Children & Youth	}
730 Phillips St	}
Stroudsburg, PA 18360	}
Defendant	}
	}
and	}
	}
Mr. Jorge Manteria	}
Monroe County	}
Children & Youth	}
730 Phillips St	}
Stroudsburg, PA 18360	}
Defendant	}
	}
and	}
	}
Northampton County	}
669 Washington Street	}
Easton, Pennsylvania 18042	}
Defendant	}
	}
and	}
	}
Bethlehem Township	}
4225 Easton Avenue	}
Bethlehem, Pa. 18020	}
Defendant	}
	}
and	}
	}
Officer Andrew Keyock	}
Bethlehem Township Police Department	}
4225 Easton Ave,	}
Bethlehem, PA 18020	}
Defendant	}
	}
and	}
	}
Officer Thomas A. Smith	}

Bethlehem Township Police Department	}
4225 Easton Ave.	}
Bethlehem, PA 18020	}
Defendant	}
	}
and	}
	}
Corporal Kirk Harryn	}
Bethlehem Township Police Department	}
4225 Easton Ave.	}
Bethlehem, PA 18020	}
Defendant	}
	}
and	}
	}
Chief Daniel G. Pancoast	}
Bethlehem Township Police Department	}
4225 Easton Ave.	}
Bethlehem, PA 18020	}
Defendant	}
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	MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD.....	278
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JURISDICTION

1. This claim is being filed in part under the Americans with Disabilities Act of 1990, as codified in 42 U.S.C. § 12112-12117, for acts of discrimination against an individual with a known disability. The U.S. District Courts hold original jurisdiction over claims arising under the Americans with Disabilities Act. This case also involves state law claims arising out of or in controversy as the discrimination claim. Under 28 U.S. Code § 1367, since the U.S. District Court has jurisdiction over the discrimination claim, and the State claims arise out of a common nucleus of operative fact, the Court may also exercise supplemental jurisdiction to hear those state claims. *United Mine Workers v Gibbs*, 383 US 715 (1966). The U.S. District Court has original jurisdiction over the Constitutional claims.

VENUE

2. Plaintiffs Grace Smith, Esq., Michael O. Smith, J.D., and J.A. Smith (minor child) all reside in Monroe County Pennsylvania. All named Defendants live, work or have a principle place of business in the state of Pennsylvania, with the entirety of the events described in this complaint occurring in Northampton County and Monroe County in Pennsylvania. Given the location of the events and the parties involved in this matter, the forum for this case would be the State of Pennsylvania, with the United States District Court for the Eastern District of Pennsylvania being the correct venue for these proceedings.

Parties to the Following Claims

1
2
3 1. **Plaintiff** Grace L. Smith, Esq., is an adult resident of Monroe County,
4 Pennsylvania.

5 2. **Plaintiff** Michael O. Smith, J.D. is an adult resident of Monroe County,
6 Pennsylvania.

7 3. **Plaintiff** Newborn baby J.A.S. is a child and resident of Monroe County,
8 Pennsylvania.

9 4. **Defendant** St. Luke's University Health Network, via St. Luke's Hospital,
10 Anderson Campus; hereinafter, St. Luke's or St. Luke's Hospital is a corporation with its
11 principal place of business located at 1872 St. Luke's Blvd., in Easton, Pennsylvania,
12 and is duly authorized to conduct business within the Commonwealth of Pennsylvania.
13 Defendant St. Luke's Hospital was, at all times relevant, acting by and through its duly
14 assigned agents, employees, and/or assigns, who were then and there acting within the
15 course and scope of their employment and in accordance with the customs, policies,
16 and practices of St. Luke's Hospital.

17 5. **Defendant** Ms. Teresa Marlino, MD, a private individual and a medical provider
18 at St. Luke's Hospital—Anderson Campus, provided medical services for Defendant St.
19 Luke's Hospital via Defendant OBHG PA Pennsylvania, PC, and was acting as a duly
20 assigned agent, employee, and/or assign of both entities (St. Luke's Hospital & OBHG
21 PA), and at all times relevant, and while acting in the course and scope of her
22 employment, was acting under color of state law and in accordance with the customs,
23 policies, and practices of Defendants St. Luke's Hospital and OBHG PA.

1 6. **Defendant Ms. Cynthia M. Shultz, MD**, a private individual and a medical
2 provider at St. Luke's Hospital—Anderson Campus, provided medical services for
3 Defendant St. Luke's via Defendant Onsite Neonatal, and was acting as a duly assigned
4 agent, employee, and/or assign of both entities (St. Luke's & Onsite Neonatal), and at
5 all times relevant, and while acting in the course and scope of her employment, was
6 acting under color of state law and in accordance with the customs, policies, and
7 practices of Defendants St. Luke's Hospital and Onsite Neonatal.

8 7. **Defendant Mr. Patrick Philpot, DO**, a private individual, holds the title of
9 Associate Medical Director of Neonatology at St. Luke's Hospital, and is a medical
10 provider at St. Luke's Hospital—Anderson Campus, provided medical services for
11 Defendant St. Luke's via Defendant Onsite Neonatal, and was acting as a duly assigned
12 agent, employee, and/or assign of both entities (St. Luke's & Onsite Neonatal), and at
13 all times relevant, and while acting in the course and scope of his employment, was
14 acting under color of state law and in accordance with the customs, policies, and
15 practices of Defendants St. Luke's and Onsite Neonatal.

16 8. **Defendant Ms. Dianne R. Jacobetz, MD**, a private individual, holds the title of
17 Regional Medical Director at St. Luke's Hospital, and is a medical provider at St. Luke's
18 Hospital—Anderson Campus, provided medical services for Defendant St. Luke's with
19 Defendant St. Luke's Physician's Group, and was acting as a duly assigned agent,
20 employee, and/or assign of one or both entities (St. Luke's Hospital & St. Luke's
21 Physician's Group), and at all times relevant, and while acting in the course and scope
22 of her employment, was acting under color of state law and in accordance with the

1 customs, policies, and practices of Defendants St. Luke's Hospital and St. Luke's
2 Physician's Group.

3 9. **Defendant Mr. Shadi N. Malaeb MD**, a private individual and a medical provider
4 at St. Luke's Hospital—Anderson Campus, provided medical services for Defendant St.
5 Luke's via Defendant Onsite Neonatal, and was acting as a duly assigned agent,
6 employee, and/or assign of both entities (St. Luke's & Onsite Neonatal), and at all times
7 relevant, and while acting in the course and scope of his employment, was acting under
8 color of state law and in accordance with the customs, policies, and practices of
9 Defendants St. Luke's and Onsite Neonatal.

10 10. **Defendant Ms. Marilyn E. Ekonomidis, MD**, a private individual and a medical
11 provider at St. Luke's Hospital—Anderson Campus, provided medical services for
12 Defendant St. Luke's via Defendant Bethlehem Neonatal, and was acting as a duly
13 assigned agent, employee, and/or assign of both entities (St. Luke's & Bethlehem
14 Neonatal), and at all times relevant, and while acting in the course and scope of her
15 employment, was acting under color of state law and in accordance with the customs,
16 policies, and practices of Defendants St. Luke's and Bethlehem Neonatal.

17 11. **Defendant Mr. Christopher Gilbert, MD**, a private individual and a medical
18 provider at St. Luke's Hospital—Anderson Campus, provided medical services for
19 Defendant St. Luke's via Defendant St. Luke's Obstetrics and Gynecology Associates,
20 and was acting as a duly assigned agent, employee, and/or assign of both entities (St.
21 Luke's Hospital & St. Luke's Obstetrics), and at all times relevant, and while acting in
22 the course and scope of his employment, was acting under color of state law and in

1 accordance with the customs, policies, and practices of Defendants St. Luke's and St.
2 Luke's Obstetrics.

3 12. **Defendant Ms. Hannah Milthorpe, MD**, a private individual and a medical
4 provider at St. Luke's Hospital—Anderson Campus, provided medical services for
5 Defendant St. Luke's via Defendant St. Luke's Physician's Group, and was acting as a
6 duly assigned agent, employee, and/or assign of both entities (St. Luke's & SLPG), and
7 at all times relevant, and while acting in the course and scope of her employment, was
8 acting under color of state law and in accordance with the customs, policies, and
9 practices of Defendants St. Luke's and SLPG.

10 13. **Defendant Ms. Beth A. Maisel, MD**, a private individual and a medical provider at
11 St. Luke's Hospital—Anderson Campus, provided medical services for Defendant St.
12 Luke's via Defendant Onsite Neonatal, and Defendant OBHG PA Pennsylvania, PC,
13 and was acting as a duly assigned agent, employee, and/or assign of all three entities
14 (St. Luke's, Onsite Neonatal, & OBHG PA PA), and at all times relevant, and while
15 acting in the course and scope of her employment, was acting under color of state law
16 and in accordance with the customs, policies, and practices of Defendants St. Luke's,
17 Onsite Neonatal, & OBBG PA.

18 14. **Defendant Ms. Denese Brown, MD**, a private individual and a medical provider
19 at St. Luke's Hospital—Anderson Campus, provided medical services for Defendant St.
20 Luke's via Defendant St. Luke's Physician's Group, and was acting as a duly assigned
21 agent, employee, and/or assign of both entities (St. Luke's & SLPG), and at all times
22 relevant, and while acting in the course and scope of her employment, was acting under

1 color of state law and in accordance with the customs, policies, and practices of
2 Defendants St. Luke's and SLPG.

3 15. **Defendant Ms. Kimberly A. Costello, DO,** a private individual, the Medical
4 Director of the NICU, and a medical provider at St. Luke's Hospital—Anderson Campus,
5 provided medical services for Defendant St. Luke's via Defendant Onsite Neonatal, and
6 was acting as a duly assigned agent, employee, and/or assign of both entities (St.
7 Luke's & Onsite Neonatal), and at all times relevant, and while acting in the course and
8 scope of her employment, was acting under color of state law and in accordance with
9 the customs, policies, and practices of Defendants St. Luke's and Onsite Neonatal.

10 16. **Defendant Mr. Gilberto I. Santiago, MD,** a private individual and a medical
11 provider at St. Luke's Hospital—Anderson Campus, provided medical services for
12 Defendant St. Luke's, and was acting as a duly assigned agent, employee, and/or
13 assign of St. Luke's, and at all times relevant, and while acting in the course and scope
14 of his employment, was acting under color of state law and in accordance with the
15 customs, policies, and practices of Defendant St. Luke's.

16 17. **Defendant Ms. Chaminie Wheeler, DO,** a private individual and a medical
17 provider at St. Luke's Hospital—Anderson Campus, provided medical services for
18 Defendant St. Luke's via Defendant Onsite Neonatal, and was acting as a duly assigned
19 agent, employee, and/or assign of both entities (St. Luke's & Onsite Neonatal), and at
20 all times relevant, and while acting in the course and scope of her employment, was
21 acting under color of state law and in accordance with the customs, policies, and
22 practices of Defendants St. Luke's and Onsite Neonatal.

1 18. **Defendant** Ms. Patricia Bates, CRNP, a private individual and a medical provider
2 at St. Luke's Hospital—Anderson Campus, provided medical services for Defendant St.
3 Luke's via Defendant Onsite Neonatal, and was acting as a duly assigned agent,
4 employee, and/or assign of both entities (St. Luke's & Onsite Neonatal), and at all times
5 relevant, and while acting in the course and scope of her employment, was acting under
6 color of state law and in accordance with the customs, policies, and practices of
7 Defendants St. Luke's and Onsite Neonatal.

8 19. **Defendant** Ms. Kimberly A. Nardis, CRNP, a private individual and a medical
9 provider at St. Luke's Hospital—Anderson Campus, provided medical services for
10 Defendant St. Luke's via Defendant Onsite Neonatal, and was acting as a duly assigned
11 agent, employee, and/or assign of both entities (St. Luke's & Onsite Neonatal), and at
12 all times relevant, and while acting in the course and scope of her employment, was
13 acting under color of state law and in accordance with the customs, policies, and
14 practices of Defendants St. Luke's and Onsite Neonatal.

15 20. **Defendant** Ms. Kimberly A. Butz, RN, a private individual and a medical provider
16 at St. Luke's Hospital—Anderson Campus, provided medical services for Defendant St.
17 Luke's, and was acting as a duly assigned agent, employee, and/or assign of St. Luke's,
18 and at all times relevant, and while acting in the course and scope of her employment,
19 was acting under color of state law and in accordance with the customs, policies, and
20 practices of Defendant St. Luke's.

21 21. **Defendant** "Security Guard 'Freddy'", a St. Luke's Hospital security guard, is a
22 private individual and not a state official, yet at all times relevant, and while acting in the
23 course and scope of his employment, "Security Guard 'Freddy'" was acting under color

1 of state law and in accordance with the customs, policies, and practices of Defendant
2 St. Luke's Hospital.

3 22. **Defendant** **"Security Guard 'Joe'"**, a St. Luke's Hospital security guard, is a
4 private individual and not a state official, yet at all times relevant, and while acting in the
5 course and scope of his employment, "Security Guard 'Joe'" was acting under color of
6 state law and in accordance with the customs, policies, and practices of Defendant St.
7 Luke's Hospital.

8 23. **Defendant** **"Security Guard 'Nate'"**, a St. Luke's Hospital security guard, is a
9 private individual and not a state official, yet at all times relevant, and while acting in the
10 course and scope of his employment, "Security Guard 'Nate'" was acting under color of
11 state law and in accordance with the customs, policies, and practices of Defendant St.
12 Luke's Hospital.

13 24. **Defendant(s)** **"Security Guard(s) 'Unknown'", hereinafter UKSGs or UKSG**, a St.
14 Luke's Hospital security guard(s), is a private individual(s) and not a state official, yet at
15 all times relevant, and while acting in the course and scope of his or her employment,
16 "Security Guard(s) 'Unknown'" was acting under color of state law and in accordance
17 with the customs, policies, and practices of Defendant St. Luke's Hospital.

18 25. **Defendant** **"Security Supervisor 'Unknown'", hereinafter "UKSS"**, a St. Luke's
19 Hospital security guard, is a private individual and not a state official, yet at all times
20 relevant, and while acting in the course and scope of his employment, "UKSS" was
21 acting under color of state law and in accordance with the customs, policies, and
22 practices of Defendant St. Luke's Hospital.

1 26. **Defendant** *“Head of Hospital Security ‘Unknown’”, hereinafter “UKHHS”*, a St.
2 Luke’s Hospital security guard, is a private individual and not a state official, yet at all
3 times relevant, and while acting in the course and scope of his employment, “UKHHS”
4 was acting under color of state law and in accordance with the customs, policies, and
5 practices of Defendant St. Luke’s Hospital.

6 27. **Defendant** *Mr. Steve Lanshe, Esq.*, a St. Luke’s Hospital attorney with the title of
7 Associate General Counsel, is a private individual and not a state official, yet at all times
8 relevant, and while acting in the course and scope of his employment, Mr. Lanshe was
9 acting under color of state law and in accordance with the customs, policies, and
10 practices of Defendant St. Luke’s Hospital.

11 28. **Defendant** *Mr. Robert L. Wax, Esq.*, a St. Luke’s Hospital attorney with the title
12 of Senior Vice President & General Counsel, is a private individual and not a state
13 official, yet at all times relevant, and while acting in the course and scope of his
14 employment as an attorney and attorney supervisor, Mr. Wax was acting under color of
15 state law and in accordance with the customs, policies, and practices of Defendant St.
16 Luke’s Hospital.

17 29. **Defendant** *St. Luke’s Hospital Social Worker “Vanessa”*, a private individual and
18 a social services provider at St. Luke’s Hospital—Anderson Campus, provided social
19 services for Defendant St. Luke’s Hospital, and was acting as a duly assigned agent,
20 employee, and/or assign of St. Luke’s Hospital, and at all times relevant, and while
21 acting in the course and scope of her employment, was acting under color of state law
22 and in accordance with the customs, policies, and practices of Defendant St. Luke’s
23 Hospital.

1 30. **Defendant** Ms. Darla Frack, a St. Luke's Hospital administrator with the title of
2 Vice President of Patient Care Services, is a private individual, yet at all times relevant,
3 and while acting in the course and scope of her employment, Defendant Ms. Frack was
4 acting under color of state law and in accordance with the customs, policies, and
5 practices of Defendant St. Luke's Hospital.

6 31. **Defendant** Ms. Dawn Hoffman, is a private individual and a St. Luke's Hospital
7 administrator with the title of Practice Administrator, at St. Luke's Hospital—Anderson
8 Campus, provided advisory services for Defendant St. Luke's via Defendant St. Luke's
9 Physician Group, and was acting as a duly assigned agent, employee, and/or assign of
10 both entities (St. Luke's & SLPG), and at all times relevant, and while acting in the
11 course and scope of her employment, was acting under color of state law and in
12 accordance with the customs, policies, and practices of Defendants St. Luke's and
13 SLPG.

14 32. **Defendants** "Hospital Leadership Team", hereinafter "HLT", a St. Luke's Hospital
15 decision making body, or otherwise a body used to consult St. Luke's Hospital
16 personnel, was at all times relevant, and while acting in the course and scope of their
17 employment, Defendants 'HLT' were acting under color of state law and in accordance
18 with the customs, policies, and practices of Defendant St. Luke's Hospital; future fact
19 finding hopes to uncover the nature and extent of these Defendants.

20 33. **Defendant** Onsite Neonatal Partners, Inc., is a corporation with its principal place
21 of business located at 1000 Haddonfield-Berlin Rd., Unit 210, in Voorhees, New Jersey
22 and is duly authorized to conduct business within the State of New Jersey and the
23 Commonwealth of Pennsylvania. Defendant Onsite Neonatal was, at all times relevant,

1 acting by and through its duly assigned agents, employees, and/or assigns, who were
2 then and there acting within the course and scope of their employment and in
3 accordance with the customs, policies, and practices of Onsite Neonatal.

4 34. **Defendant Mr. Jerry Hric, MD**, a private individual who holds the title of Founder
5 and CEO at Onsite Neonatal, and through Defendant Onsite Neonatal is a medical
6 provider at St. Luke's Hospital—Anderson Campus, where he provided medical
7 services for Defendant St. Luke's via Defendant Onsite Neonatal, and was acting as a
8 duly assigned agent, employee, and/or assign of one or both entities (St. Luke's &
9 Onsite Neonatal), and at all times relevant, and while acting in the course and scope of
10 his employment, was acting under color of state law and in accordance with the
11 customs, policies, and practices of Defendants St. Luke's Hospital and Onsite Neonatal.

12 35. **Defendant Anderson Laboratory**, is a corporation with its principal place of
13 business located at 1872 St. Luke's Blvd., in Easton, Pennsylvania, and is duly
14 authorized to conduct business within the Commonwealth of Pennsylvania. Defendant
15 Anderson Laboratory was, at all times relevant, acting by and through its duly assigned
16 agents, employees, and/or assigns, who were then and there acting within the course
17 and scope of their employment and in accordance with the customs, policies, and
18 practices of Anderson Laboratory.

19 36. **Defendant Ms. Emily Miller, MD**, a private individual holding the title of Lab
20 Medical Director, provided testing services for Defendant St. Luke's via Defendant
21 Anderson Laboratory, and was acting as a duly assigned agent, employee, and/or
22 assign of one or both entities (St. Luke's & Anderson Laboratory), and at all times
23 relevant, and while acting in the course and scope of her employment, was acting under

1 color of state law and in accordance with the customs, policies, and practices of
2 Defendants St. Luke's and Anderson Laboratory.

3 37. **Defendant OBHG PA Pennsylvania, PC (OBHG PA)**, is a corporation with its
4 principal place of business located at 777 Loundes Hill Rd., Bldg. 1, in Greenville, South
5 Carolina and is duly authorized to conduct business within the State of South Carolina
6 and the Commonwealth of Pennsylvania. Defendant OBHG PA Pennsylvania, PC was,
7 at all times relevant, acting by and through its duly assigned agents, employees, and/or
8 assigns, who were then and there acting within the course and scope of their
9 employment and in accordance with the customs, policies, and practices of Defendant
10 OBHG PA Pennsylvania, PC.

11 38. **Defendant St. Luke's Physician Group (SLPG)**, is a corporation with its principal
12 place of business located at 305 W. North St., in Nazareth, Pennsylvania and is duly
13 authorized to conduct business within the Commonwealth of Pennsylvania. Defendant
14 St. Luke's Physician Group was, at all times relevant, acting by and through its duly
15 assigned agents, employees, and/or assigns, who were then and there acting within the
16 course and scope of their employment and in accordance with the customs, policies,
17 and practices of Defendant St. Luke's Physician Group.

18 39. **Defendant Bethlehem Neonatal Associates (BNA)**, is a corporation with its
19 principal place of business located at 801 Ostrum St., in Bethlehem, Pennsylvania and
20 is duly authorized to conduct business within the Commonwealth of Pennsylvania.
21 Defendant BNA was, at all times relevant, acting by and through its duly assigned
22 agents, employees, and/or assigns, who were then and there acting within the course

1 and scope of their employment and in accordance with the customs, policies, and
2 practices of BNA.

3 40. **Defendant St. Luke's Obstetrics and Gynecology Associates (St. Luke's OGA)**,
4 is a corporation with its principal place of business located at 487 E. Moorestown Rd.,
5 Suite 106, in Wind Gap, Pennsylvania and is duly authorized to conduct business within
6 the Commonwealth of Pennsylvania. Defendant St. Luke's OGA was, at all times
7 relevant, acting by and through its duly assigned agents, employees, and/or assigns,
8 who were then and there acting within the course and scope of their employment and in
9 accordance with the customs, policies, and practices of *St. Luke's OGA*.

10 41. **Defendant Monroe County**, is a Pennsylvania County of the Fourth Class which
11 operates the Monroe County Office of Children and Youth Services. Defendant Monroe
12 County was, at all times relevant, acting by and through its duly authorized agents,
13 employees and/or assigns, who were then and there acting within the course and scope
14 of their employment, under the color of state law and in accordance with the customs,
15 policies and practices of Monroe County.

16 42. **Defendant— Ms. Adelaide W. Grace, Administrator, Monroe County Office of**
17 *Children and Youth*, was acting within the course and scope of their employment, under
18 the color of state law and in accordance with the customs, policies and practices of
19 Monroe County.

20 43. **Defendant— Mr. Tim Shaw, Caseworker Supervisor, Monroe County Office of**
21 *Children and Youth*, was acting within the course and scope of their employment, under
22 the color of state law and in accordance with the customs, policies and practices of
23 Monroe County.

1 44. **Defendant**— Mr. Jorge Manteria, Caseworker, Monroe County Office of Children
2 and Youth, was acting within the course and scope of their employment, under the color
3 of state law and in accordance with the customs, policies and practices of Monroe
4 County.

5 45. **Defendant** Northampton County, is a Pennsylvania County of the Third Class
6 which operates the Bethlehem Police Department and the Northampton County Office
7 of Children and Youth Services. Defendant Northampton County was, at all times
8 relevant, acting by and through its duly authorized agents, employees and/or assigns,
9 who were then and there acting within the course and scope of their employment, under
10 the color of state law and in accordance with the customs, policies and practices of
11 Northampton County.

12 46. **Defendant** Bethlehem Township, is a Pennsylvania Township in Northampton
13 Township, which operates the Bethlehem Police Department. Defendant Bethlehem
14 Township was, at all times relevant, acting by and through its duly authorized agents,
15 employees and/or assigns, who were then and there acting within the course and scope
16 of their employment, under the color of state law and in accordance with the customs,
17 policies and practices of Bethlehem Township.

18 47. **Defendant**— Officer Andrew Keyock, Patrolman, Badge #629, of the Bethlehem
19 Police Department, was acting under color of state law, and at all times relevant, was
20 acting within the course and scope of his employment and in accordance with the
21 customs, policies, and practices of the Bethlehem Police Department.

22 48. **Defendant**— Officer Thomas A. Smith, Patrolman, Badge #667, of the Bethlehem
23 Police Department, was acting under color of state law, and at all times relevant, was

1 acting within the course and scope of his employment and in accordance with the
2 customs, policies, and practices of the Bethlehem Police Department.

3 49. **Defendant**—*Corporal Kirk Harryn, Administration*, of the Bethlehem Police
4 Department, was acting under color of state law, and at all times relevant, was acting
5 within the course and scope of his employment and in accordance with the customs,
6 policies, and practices of the Bethlehem Police Department.

7 50. **Defendant**—*Chief Daniel G. Pancoast, Administration*, of the Bethlehem Police
8 Department, was acting under color of state law, and at all times relevant, was acting
9 within the course and scope of his employment and in accordance with the customs,
10 policies, and practices of the Bethlehem Police Department.

11 **Facts of the Case**

12 **I. Facts I: Case in Chronology**

13 51. The Plaintiff Smith Family moved to Monroe County, PA from Delaware County,
14 PA during the week prior to the birth of Plaintiff Newborn baby J.A.S.

15 52. Sometime in the week preceding the birth of Plaintiff Newborn baby J.A.S.,
16 Plaintiff Mrs. Smith called Defendant St. Luke's Hospital and inquired as to what the
17 typical length of stay for a vaginal delivery without any complications would be in light of
18 the COVID-19 virus pandemic.

19 53. The phoned representative of Defendant St. Luke's Hospital was not sure what
20 the answer to Plaintiff Mrs. Smith inquiry was, and so instructed Mrs. Smith that another
21 representative of Defendant St. Luke's Hospital would return her call with an appropriate
22 answer.

1 54. An individual holding themselves out as a representative of Defendant St. Luke's
2 Hospital returned Defendant Mrs. Smith's call at a later time and conveyed to Plaintiff
3 Mrs. Smith that the expectant time that a mother would likely be discharged twenty-four
4 hours after a successful vaginal delivery without complications, in light of the COVID-19
5 virus pandemic.

6 55. On Thursday, April 8th, 2021 at approximately 12:14 pm, Plaintiff Mrs. Smith's
7 water broke.

8 56. On Thursday, April 8th, 2021 at approximately 1:42 pm, Plaintiffs Mr. & Mrs.
9 Smith arrived at Defendant St. Luke's Hospital in Easton, PA.

10 57. Initial intake of Plaintiff Mrs. Smith was at a reception desk on Floor 2 of the
11 Women's and Babies Pavilion.

12 58. Intake receptionist used old information from Plaintiff Mrs. Smith's previous
13 medical records as a basis to label Plaintiff Mrs. Smith's intake wristband "Osmun" (Mrs.
14 Smith's maiden name).

15 59. Plaintiffs Mr. & Mrs. Smith advised the intake receptionist that the last name
16 represented on the wristband was in error and that Mrs. Smith had been married for
17 seven years.

18 60. Plaintiffs Mr. & Mrs. Smith advised the intake receptionist that the appropriate
19 name for Plaintiff Mrs. Smith's medical files shall be "Smith" and not "Osmun", and that
20 Plaintiff Mrs. Smith's medical wristband should reflect that fact.

21 61. Even after being shown identification by both Plaintiffs Mr. & Mrs. Smith, the
22 intake receptionist did not believe assertions by the Plaintiffs Mr. & Mrs. Smith, who

1 then had to strongly insist that medical information for Mrs. Smith be labelled
2 appropriately, as should be the same for their soon-to-be-born child.

3 62. The intake receptionist insisted that Plaintiff Mrs. Smith's maiden name would
4 suffice for the Defendant St. Luke's Hospital's purposes.

5 63. Shortly thereafter, Plaintiffs Mr. and Mrs. Smith were taken to a triage room.

6 64. Once in the triage room, the intake nurse stated that Plaintiff Mrs. Smith's
7 married name should be on Mrs. Smith's wristband, and not the plaintiff's maiden name.

8 65. The intake nurse left the triage room and returned with a new wristband in which
9 "Grace Smith" was handwritten on the wristband.

10 66. At this point, there was no indication that the intake nurse, nor anyone else, had
11 changed or updated Mrs. Smith's electronic hospital chart to reflect her current, married
12 last name as it was handwritten on Plaintiff's wristband.

13 67. During the triage procedure Plaintiff Mrs. Smith provided a urine sample and had
14 her blood drawn for testing.

15 68. During the triage procedure Plaintiff Mrs. Smith provided Defendant St. Luke's
16 Hospital with a paper printed version of her most current medical records, which had
17 been updated less than a week prior.

18 69. Contained in the medical records that were provided to Defendant St. Luke's
19 Hospital was Plaintiff Mrs. Smith's legal prescription for the amphetamine Vyvanse.

20 70. Plaintiff Mrs. Smith's prescription for Vyvanse during pregnancy had been
21 reviewed and approved of by three prior medical doctors, including Mrs. Smith's
22 obstetrician and psychiatrist.

1 71. The records of the prior examinations and approvals for Vyvanse as a legal
2 prescription for Plaintiff Mrs. Smith were contained within the paper medical records
3 provided to Defendant St. Luke's Hospital.

4 72. Contained in the medical records that were provided to Defendant St. Luke's
5 Hospital was Plaintiff Mrs. Smith's legal prescription for marijuana.

6 73. Defendant St. Luke's Hospital requested to copy the records and then to return
7 the original copy to Plaintiff Mrs. Smith.

8 74. Plaintiff Mrs. Smith consented to her medical records being copied by St. Luke's
9 Hospital staff and returned to Mrs. Smith.

10 75. A representative of St. Luke's Hospital removed the records from the presence of
11 the Plaintiffs Mr. & Mrs. Smith and returned a short while later asserting that she had
12 indeed made a copy of Mrs. Smith medical records for inclusion in her current medical
13 file.

14 76. The original copies of Plaintiff Mrs. Smith's medical records were then returned to
15 Mrs. Smith.

16 77. Plaintiff Mrs. Smith then orally reviewed her medical history that was reflected in
17 the medical records that she had just submitted to St. Luke's Hospital with a member of
18 St. Luke's Hospital staff.

19 78. The oral record as presented by Plaintiff Mrs. Smith exactly concurred with the
20 written record that she had provided to Defendant St. Luke's Hospital.

21 79. Information on how to the verify Plaintiff Mrs. Smith medical records was
22 contained in the medical records she provided to Defendant St. Luke's Hospital.

1 80. Not one of Defendant St. Luke's Hospital's staff, employees, or agents held out
2 to Mr. or Mrs. Smith that the veracity of Mrs. Smith's medical records was in question.

3 81. Ms. Kathy Lakatos, RN, a representative of Defendant St. Luke's Hospital
4 commented throughout the intake triage process comments such as, "You two appear
5 to be running from the law," because our last name was Smith and that we had just
6 moved to the area.

7 82. The aforementioned "joke" made by Ms. Lakatos, RN was made on at least
8 three occasions.

9 83. Neither Mr. nor Mrs. Smith responded positively to Ms. Lakatos's "joke" that
10 they were criminals.

11 84. Defendant Ms. Marilyn Ekonomidis, MD was the medical doctor in charge of
12 examining Plaintiff Mrs. Smith during triage.

13 85. Defendant Ms. Marilyn Ekonomidis, MD placed in Plaintiff Mrs. Smith's medical
14 records a diagnosis of "38 weeks gestation of pregnancy" and "VBAC" (VBAC is
15 medical shorthand for vaginal birth after caesarian).

16 86. Defendant Ms. Marilyn Ekonomidis, MD did not mention Vyvanse or marijuana as
17 potential birth complications in Plaintiff Mrs. Smith's medical records.

18 87. Defendant Ms. Marilyn Ekonomidis, MD did not mention methamphetamine as a
19 potential birth complication in Plaintiff Mrs. Smith's medical records.

20 88. Defendant Ms. Marilyn Ekonomidis, MD did not mention any signs or symptoms
21 of methamphetamine abuse as a potential birth complication in Plaintiff Mrs. Smith's
22 medical records.

1 89. Defendant Ms. Marilyn Ekonomidis, MD did record based on her triage that she
2 expected a routine birthing and anticipated a successful vaginal delivery.

3 90. Defendant Ms. Marilyn Ekonomidis, MD did not question the validity of any of the
4 oral or written medical record presented to her by Plaintiff Mrs. Smith.

5 91. Plaintiff Mrs. Smith's medical records indicate that Mrs. Smith was not expected
6 to remain at Defendant St. Luke's Hospital for more than "two midnights".

7 92. Defendant Ms. Marilyn Ekonomidis, MD did record based on her triage three
8 pregnancy complications (1) "marijuana use during pregnancy", (2) "use of Vyvanse
9 during pregnancy," and, (3) "[p]rior C/S followed by VBAC x2."

10 93. Vyvanse and marijuana consumption are not "pregnancy complications".

11 94. Defendant Ms. Marilyn Ekonomidis, MD did record marijuana under the heading
12 of "Substance and Drug Use" and not as a prescription medication in the appropriate
13 category as reflected in Plaintiff Mrs. Grace Smith medical records.

14 95. Without any rational cause Defendant St. Luke's Hospital was monitoring Plaintiff
15 Mrs. Smith behavior to ensure that she remained "cooperative" with St. Luke's staff.

16 96. Defendant St. Luke's Hospital did not ever have a psychiatrist examine Plaintiff
17 Mrs. Smith well-being or state-of-mind at any time ever.

18 97. The results of Defendant Mrs. Smith's initial lab screenings returned a positive
19 indication of amphetamines, as was to be expected from consuming prescription
20 Vyvanse.

21 98. Amphetamines and methamphetamines are similar but chemically distinct
22 substances from one another.

1 99. Upon information and belief, Defendant St. Luke's Hospital, and its agents,
2 employees, and/or assigns, prior to birth, concluded that they intended to remove
3 Plaintiffs Mr. & Mrs. Smith newborn child from the presence of Mr. & Mrs. Smith based
4 upon the erroneous assumption that Plaintiffs Mr. & Mrs. Smith were or would abuse
5 their newborn child.

6 100. Upon information and belief, in order to effectuate its desire to separate Plaintiffs
7 Mr. & Mrs. Smith, Defendant St. Luke's, and its agents, employees, and/or assigns
8 concocted a methodology to separate Plaintiffs Mr. & Mrs. Smith from their soon-to-be-
9 born baby.

10 101. Upon information and belief, in order to effectuate its desire to separate Plaintiffs
11 Mr. & Mrs. Smith, Defendant St. Luke's, and its agents, employees, and/or assigns
12 concocted a methodology asserting that Plaintiff Mrs. Smith ingested methamphetamine
13 and that she passed the deleterious effects of methamphetamine use on to her newborn
14 baby child while in-utero.

15 102. Upon information and belief Defendant St. Luke's Hospital, and its agents,
16 employees, and/or assigns effectuated a coordinated effort to assert that Plaintiff Mrs.
17 Smith tested positive for methamphetamine.

18 103. Defendant St. Luke's Hospital based its evidence on Plaintiff Mrs. Smith being a
19 methamphetamine abuser on a chemical test that did not differentiate between legal
20 amphetamines and illegal methamphetamines, which Defendant St. Luke's Hospital,
21 and its agents, employees, and/or assigns used as evidence to assert that Plaintiff Mrs.
22 Smith had ingested methamphetamine even though she tested positive as a result of
23 Plaintiff Mrs. Smith's known prescription use of Vyvanse (an amphetamine).

1 104. After Plaintiff Mrs. Smith's examination was concluded she and Plaintiff Mr. Smith
2 were escorted to the delivery room.

3 105. Pitocin was administered by an anesthesiologist.

4 106. At approximately 11:00 pm Plaintiff Mrs. Smith went into physical labor.

5 107. At approximately 11:12 pm Plaintiff Mrs. Smith successfully gave vaginal birth
6 without complications to Plaintiff Newborn baby J.A.S.

7 108. In his birth assessment, Plaintiff newborn baby J.A.S. did not have any recorded
8 complications or issues with breathing, grunting, flaring, or signs of stress according to
9 Defendants Ms. Beth A. Maisel, MD, and, Ms. Hannah Milthorpe, MD.

10 109. Without the knowledge and consent of Plaintiffs Mr. & Mrs. Smith, tissue samples
11 related to the birth of Newborn baby J.A.S. were collected to be tested for
12 methamphetamine and other illicit substances, including the umbilical cord that
13 connected Plaintiff Mrs. Smith to Plaintiff Newborn baby J.A.S.

14 110. On the morning of April 9th, 2021 Defendant Mr. Gilberto I. Santiago, MD
15 examined Newborn baby J.A.S. and found him to be healthy.

16 111. Based on the information that Plaintiffs Mr. & Mrs. Smith were given, that Plaintiff
17 Newborn baby J.A.S. was born without complications and continued to be healthy, and
18 that because of COVID-19 policies that were reported to Mrs. Smith about being
19 discharged within twenty-four hours of a child's birth prior to Plaintiffs Mr. & Mrs. Smith
20 arriving at Defendant St. Luke's Hospital, and based on the fact that Mr. & Mrs. Smith
21 had three other children to care for at home, Plaintiffs Mr. & Mrs. Smith requested that
22 they be discharged as soon as practicable.

1 112. Plaintiffs Mr. & Mrs. Smith hoped to be discharged with Newborn baby J.A.S.
2 sometime on the evening of April 9th, 2021.

3 113. At approximately 10:30 am on April 9th, 2021, Defendants Ms. Chaminie
4 Wheeler, DO and another unknown doctor came into Plaintiff Mrs. Smith's postpartum
5 hospital room inquiring as to why she wished to be discharged already.

6 114. Plaintiffs Mr. and Mrs. Smith shared the aforementioned reasons with the doctors
7 present.

8 115. Defendant Ms. Chaminie Wheeler, DO made every effort to convince Plaintiffs
9 Mr. & Mrs. Smith to stay longer at the hospital without a reasonable explanation.

10 116. Plaintiffs Mr. & Mrs. Smith stated to the doctors present that they were not
11 comfortable remaining in a hospital during a COVID-19 pandemic.

12 117. Plaintiffs Mr. & Mrs. Smith's COVID-19 concerns were dismissed by the doctors
13 present by ignoring them outright.

14 118. Defendant Ms. Chaminie Wheeler, DO, likely surmised that the Plaintiffs Mr. &
15 Mrs. Smith would not be easy to persuade of facts that were not based in evidence, and
16 therefore she claimed that a grunt that babies typically make to demonstrate a desire to
17 breastfeed was not a grunt indicating hunger, but instead indicated potential breathing
18 problems associated with a possible infection in Newborn baby J.A.S.'s lungs.

19 119. Although Mr. & Mrs. Smith were skeptical of the reasoning of Ms. Chaminie
20 Wheeler, DO and the other accompanying doctor, and after much convincing, Mr. and
21 Mrs. Smith deferred to the expertise of the doctors present and allowed an "observation
22 period" of Newborn baby J.A.S. out of Mrs. Smith's postpartum hospital room.

1 120. Subsequently a chest x-ray of Newborn baby J.A.S. was ordered and
2 administered.

3 121. Subsequently Plaintiff Newborn baby J.A.S. was out of the presence of Plaintiffs
4 Mr. & Mrs. Smith for approximately one hour while “under observation” by hospital staff
5 in another location of the hospital.

6 122. When Defendant Ms. Chaminie Wheeler, DO returned to Plaintiff Mrs. Smith’s
7 postpartum hospital room, she claimed that she had new information about Plaintiff
8 Newborn baby J.A.S. and asserted to Mr. & Mrs. Smith that Newborn baby J.A.S.’s
9 “pulse ox was measured in the mid 80s” and that as such it was a “no brainer” to admit
10 Newborn baby J.A.S. to the hospital’s NICU.

11 123. Defendant Ms. Chaminie Wheeler, MD held out to Mr. & Mrs. Smith as fact that
12 Newborn baby J.A.S. was “born early” and as such he had “too much fluid in his lungs”,
13 but the situation was not “something to be concerned about” and only required to be
14 placed on oxygen.

15 124. Once again, because reality did not seem to comport with the assertions of
16 Defendant Ms. Chaminie Wheeler, DO to Plaintiffs Mr. & Mrs. Smith, Mr. & Mrs. Smith
17 requested that Newborn baby J.A.S. should be observed in Mrs. Smith’s postpartum
18 hospital room instead of the NICU.

19 125. Plaintiffs Mr. & Mrs. Smith were told by Defendant Ms. Chaminie Wheeler, DO
20 that the care that Newborn baby J.A.S. required could not be provided to him in Mrs.
21 Smith’s postpartum hospital room, and that he could only properly be attended to in the
22 NICU.

1 126. No x-ray results had been obtained yet at this point, and if such results were
2 available, they were not communicated to Plaintiffs Mr. & Mrs. Smith.

3 127. Other than one “grunt” and the assertion that Newborn baby J.A.S.’s pulse ox
4 reading was at one point in the mid 80s there was not any other known evidence
5 presented to Plaintiffs Mr. & Mrs. Smith to admit Newborn baby J.A.S. to the NICU.

6 128. Plaintiffs Mr. & Mrs. Smith were assured by medical staff that it was not likely that
7 Newborn baby J.A.S. would remain in the NICU long, given his apparent mild condition,
8 and that his placement there was to err on the side of caution.

9 129. Defendant Ms. Chaminie Wheeler, DO also recommended antibiotics also to “err
10 on the side of caution” in case the cause of Newborn baby J.A.S.’s apparent breathing
11 difficulties were related to as yet undiagnosed infection, and so Newborn baby J.A.S.
12 was prescribed “precautionary antibiotics”.

13 130. Plaintiff Mr. Smith made it known to Defendant Ms. Chaminie Wheeler, DO that
14 he was allergic to penicillin and erythromycin and many related antibiotics, and he urged
15 Dr. Wheeler to use caution when considering or administering any antibiotics to
16 Newborn baby J.A.S. because as a newborn he may be particularly sensitive to the
17 administration of antibiotics at such a young stage of life.

18 131. Plaintiffs Mr. & Mrs. Smith were reassured by Defendant Ms. Chaminie Wheeler,
19 DO, that there “weren’t any known side-effects related to the antibiotic” that they would
20 give to Newborn baby J.A.S.

21 132. Plaintiffs Mr. & Mrs. Smith reluctantly deferred to the professional judgement of
22 the medical staff present and allowed Newborn baby J.A.S. to be admitted to the NICU.

1 133. Plaintiff Newborn baby J.A.S. was then placed in a transport bed where tubes
2 were placed in his nose to provide him with additional oxygen and taken to the NICU.

3 134. At no time were Plaintiffs Mr. and Mrs. Smith made aware that Plaintiff Newborn
4 baby J.A.S.'s life was currently in life-threatening danger, or would be in life-threatening
5 danger if the treatments recommended by Defendant St. Luke's Hospital staff,
6 employees, assigns, or agents were not administered, nor were any alternative
7 treatments offered to remedy Newborn baby J.A.S.'s apparently mild symptoms.

8 135. Despite Newborn baby J.A.S. being in the NICU, Plaintiffs Mr. & Mrs. Smith were
9 told throughout the day that the results of the x-rays done on Newborn baby J.A.S. were
10 not available until many hours later around approximately 5 pm.

11 136. The results of the x-rays of Newborn baby J.A.S. were conveyed to Plaintiffs Mr.
12 & Mrs. Smith as "inconclusive", and that as a consequence of the "inconclusive" results
13 antibiotics would be continued to be administered to Newborn baby J.A.S.

14 137. After Plaintiff Mr. & Mrs. Smith received the results of Plaintiff Newborn baby
15 J.A.S.'s x-ray Mr. Smith went to Mrs. Smith's postpartum hospital room to eat food.

16 138. While in Mrs. Smith's postpartum hospital room an individual holding herself out
17 as an employee of the hospital claimed to be a social worker.

18 139. The Defendant St. Luke's Hospital's social worker requested to speak with
19 Plaintiff Mrs. Smith.

20 140. Plaintiff Mr. Smith told the Defendant St. Luke's Hospital social worker that Mrs.
21 Smith was with Newborn baby J.A.S. in the NICU and that Mr. Smith would be happy to
22 contact Mrs. Smith to speak with the Defendant St. Luke's Hospital social worker.

1 141. The Defendant St. Luke's Hospital social worker replied matter-of-factly that
2 contacting Mrs. Smith at that moment would not be necessary.

3 142. The Defendant St. Luke's Hospital social worker requested that she leave her
4 business card with him and that Plaintiff Mr. Smith have Plaintiff Mrs. Smith contact
5 Defendant St. Luke's Hospital social worker at Mrs. Smith's convenience.

6 143. Plaintiff Mr. Smith accepted the business card and agreed to make Plaintiff Mrs.
7 Smith aware of the Defendant St. Luke's Hospital social worker's request for a phone
8 call.

9 144. After completing his meal Plaintiff Mr. Smith returned to the NICU where he
10 informed Plaintiff Mrs. Smith of the Defendant St. Luke's Hospital social worker's
11 encounter and request.

12 145. Plaintiff Mrs. Smith intended to call the Defendant St. Luke's Hospital social
13 worker after having a meal for dinner.

14 146. Plaintiff Mrs. Smith was escorted by Plaintiff Mr. Smith back to her postpartum
15 hospital room so that she could eat dinner.

16 147. Plaintiff Mr. Smith decided to wait with Plaintiff Mrs. Smith until she had
17 completed her meal to escort her back to Plaintiff Newborn baby J.A.S.'s NICU pod.

18 148. Leaving Newborn baby J.A.S.'s NICU pod for the meal for Mrs. Smith to eat
19 dinner in Mr. Smith's presence in Mrs. Smith's postpartum hospital room was the first
20 time both of Newborn baby J.A.S.'s parents had both left Newborn baby J.A.S.'s
21 presence since Newborn baby J.A.S. had been admitted to the NICU.

22 149. At approximately 7 pm on April 9th, 2021, Defendant Ms. Teresa Marlino, MD
23 entered Plaintiff Mrs. Smith's postpartum hospital room.

1 150. Plaintiff Mrs. Smith had just finished her dinner, and she and Plaintiff Mr. Smith
2 were preparing to return to Newborn baby J.A.S.'s NICU pod.

3 151. Defendant Ms. Marlino, MD held herself out to be a representative of Defendant
4 St. Luke's Hospital, and that she was in charge of obstetrician residents at Defendant
5 St. Luke's Hospital.

6 152. Two other nurses were present in Plaintiff Mrs. Smith's postpartum hospital
7 room.

8 153. Defendant Ms. Marlino, MD sat herself down in a chair opposite Plaintiff Mrs.
9 Smith's hospital bed.

10 154. Plaintiff Mr. Smith was seated in a chair next to Plaintiff Mrs. Smith who was
11 residing in the hospital bed after having finished her meal.

12 155. Defendant Ms. Marlino, MD did not ever do a medical examination of Plaintiff
13 Mrs. Smith.

14 156. Defendant Ms. Marlino, MD began interrogating Plaintiffs Mr. & Mrs. Smith about
15 the nature of their lives and occupations.

16 157. From the perspective of Plaintiffs Mr. & Mrs. Smith, Defendant Ms. Marlino, MD
17 had an aggressive demeanor and posture while interrogating Mr. & Mrs. Smith.

18 158. After interrogating Plaintiffs Mr. & Mrs. Smith for some time Defendant Ms.
19 Marlino, MD accused Plaintiff Ms. Smith of having ingested methamphetamine and
20 having passed the deleterious effects of methamphetamine ingestion on to Plaintiff
21 Newborn baby J.A.S.

22 159. Plaintiffs Mr. & Mrs. Smith, knowing that Mrs. Smith had never ingested
23 methamphetamine attempted to reason with Defendant Ms. Marlino, MD that there was

1 no reasonable cause to believe that Plaintiff Mrs. Smith had ingested
2 methamphetamine, nor that she had passed the deleterious effects of such a harmful
3 substance on to her newborn baby.

4 160. Defendant Ms. Marlino, MD stated that the evidence that Plaintiff Mrs. Smith
5 ingested methamphetamine was incontrovertible.

6 161. Defendant Ms. Marlino, MD stated to Plaintiffs Mr. & Mrs. Smith that Plaintiff Mrs.
7 Smith “got it (methamphetamine) off the street for all she knows.”

8 162. Defendant Ms. Marlino, MD acted in such appalling manner that she was
9 requested to leave Plaintiff Mrs. Smith’s postpartum hospital room by the Plaintiffs Mr. &
10 Mrs. Smith four times before she acquiesced.

11 163. Defendant Ms. Marlino, MD made it clear to Plaintiffs Mr. & Mrs. Smith that she
12 thought that Plaintiff Mrs. Smith was a drug abuser and that she also abused her
13 newborn baby son.

14 164. Defendant Ms. Marlino, MD made it clear to Plaintiffs Mr. & Mrs. Smith that she
15 would be contacting Children and Youth Services to report Plaintiff Mrs. Smith as a
16 methamphetamine abuser.

17 165. Plaintiffs Mr. & Mrs. Smith suffered a catastrophic loss of trust in Defendant St.
18 Luke’s Hospital as a result of Defendant Ms. Marlino, MD’s conduct and
19 communications with them.

20 166. Plaintiff Mrs. Smith verbally withdrew consent for further treatment for herself and
21 Plaintiff Newborn baby J.A.S. to Defendant Ms. Marlino, MD.

22 167. Plaintiff Mrs. Smith turned to Plaintiff Mr. Smith to see if he concurred with her
23 judgment.

1 168. Plaintiff Mr. Smith agreed with Plaintiff Mrs. Smith and also verbally withdrew
2 consent for further treatment of Plaintiff Newborn baby J.A.S.

3 169. Plaintiffs Mr. & Mrs. Smith instructed Defendant Ms. Marlino, MD to begin the
4 appropriate paperwork and procedures to have Plaintiff Newborn baby J.A.S. removed
5 entirely to the care of his parents.

6 170. Neither Mr. nor Mrs. Smith acted in a violent nature or forceful manner towards
7 Ms. Marlino, MD or any other hospital staff.

8 171. Plaintiffs Mr. & Mrs. Smith were prepared to take Plaintiff Newborn baby J.A.S. to
9 Lehigh Valley Hospital to have his condition evaluated by professional medical staff at
10 another location unaffiliated with Defendant St. Luke's Hospital.

11 172. Still, even at this point, Plaintiffs Mr. & Mrs. Smith had not been told by any
12 agent, assign, or employee of Defendant St. Luke's Hospital that Newborn baby J.A.S.
13 had a "life-threatening condition" or that his condition would become life-threatening if
14 the treatments Newborn baby J.A.S. was suffering in the NICU were discontinued.

15 173. At no point were Plaintiffs Mr. & Mrs. Smith advised to obtain a second opinion
16 by Defendant St. Luke's Hospital staff, employees, assigns, or agents.

17 174. At no point were Plaintiffs Mr. & Mrs. Smith offered the ability to appeal decisions
18 made by Defendant St. Luke's Hospital staff, employees, assigns, or agents.

19 175. When Defendant Ms. Marlino, MD left Plaintiff Mrs. Smith's postpartum hospital
20 room Plaintiff Mr. Smith returned immediately to the NICU and informed the nurse at the
21 desk that all consent for care and treatment of Plaintiff Newborn baby J.A.S. had been
22 withdrawn and that she should inform the appropriate staff so that she could begin the
23 discharging process.

1 176. Plaintiff Mr. Smith then entered Plaintiff Newborn baby J.A.S.'s NICU pod and
2 kissed him on the forehead.

3 177. Plaintiff Mr. Smith then whispered to Newborn baby J.A.S. that he was going to
4 go get his car seat, but that he would be back soon.

5 178. Plaintiff Mr. Smith then exited the hospital and pulled his SUV into the
6 semicircular patient pick-up area close to the doors of the hospital entrance.

7 179. Plaintiff Mr. Smith returned inside the hospital and brought the baby car seat to
8 Plaintiff Grace Smith's postpartum hospital room where Plaintiff Mrs. Smith had
9 collected her belongings.

10 180. Plaintiffs Mr. & Mrs. Smith placed the belongings onto a wheeled cart and
11 returned to the NICU.

12 181. When Plaintiffs Mr. & Mrs. Smith returned to the NICU Defendant St. Luke's
13 Hospital had "locked down" the NICU to prevent Plaintiffs Mr. & Mrs. Smith from
14 reuniting with their child Plaintiff Newborn baby J.A.S.; including sealing all doors to
15 everyone but hospital personnel and placing guards at each entrance to the NICU from
16 the NICU lobby/waiting area to prevent Plaintiffs from entering the NICU.

17 182. When guards were questioned as to why Plaintiffs Mr. & Mrs. Smith were not
18 allowed to pass by the Plaintiffs, no reason was proffered.

19 183. Two other mothers and many hospital staff were present in the NICU
20 lobby/waiting area where Plaintiffs Mr. & Mrs. Smith sat waiting to be reunited with
21 Newborn baby J.A.S.

22 184. Approximately twenty minutes later two police officers arrived on the scene by
23 exiting the center elevator into the lobby/waiting area.

1 185. The two police officers that arrived on the scene were from the Bethlehem
2 Township Police Department, in Northampton County, PA.

3 186. The two police officers that arrived on the scene were Defendant Officers Andrew
4 Keyock and Thomas A. Smith, both of whom are patrolmen.

5 187. From the perspective of the Plaintiffs Mr. & Mrs. Smith, Defendant Officer
6 Andrew Keyock was agitated and had a confrontational personality.

7 188. From the perspective of the Plaintiffs Mr. & Mrs. Smith, Defendant Officer
8 Andrew Keyock had determined that Plaintiff Mr. Smith was a “bad person” before he
9 had consulted with either the Plaintiffs or Defendant St. Luke’s Hospital staff.

10 189. When Defendant Officer Keyock arrived on the scene he burst out of the elevator
11 towards Plaintiff Mr. Smith who was seated directly in front of the elevators
12 approximately twenty feet in from of the elevators and demanded in a loud voice from
13 Mr. Smith to, “know what the problem was here.”

14 190. Plaintiff Mr. Smith plainly echoed Defendant Officer Keyock’s sentiment and
15 responded that he too desired to know “what was going on”.

16 191. Defendant Officer Thomas A. Smith moved in a position towards Plaintiff Mrs.
17 Smith in a position between herself and the elevators.

18 192. Plaintiff Mrs. Smith was in a wheelchair while remaining seated in the NICU
19 lobby/waiting area.

20 193. From the perspective of the Plaintiffs Mr. & Mrs. Smith, Defendant Officer
21 Andrew Keyock continued to ask Plaintiff Mr. Smith questions in an abrasive manner
22 and close to Plaintiff Mr. Smith’s face in an attempt to get a rise of anger out of Mr.

1 Smith, so that Officer Keyock had an immediate excuse to eject him from Defendant St.
2 Luke's Property without having the need to consult Defendant St. Luke's Hospital.

3 194. Plaintiff Mr. Smith conducted himself in a respectful manner in both form and
4 tone throughout questioning by Defendant Officer Keyock.

5 195. Defendant Officer Keyock consulted Defendant St. Luke's Hospital employee,
6 assigns, or agents about the current situation with the Plaintiff Smith Family.

7 196. Plaintiff Mr. Smith finally had an opening in the conversation and properly
8 introduced himself and requested that the as yet unknown responding officer do the
9 same.

10 197. The unknown officer (Defendant Officer Keyock) responded to Plaintiff Mr. Smith
11 by saying, "I'm the cop! That's all you need to know!"

12 198. The unknown officer (Defendant Officer Keyock) then audibly scoffed at Plaintiff
13 Mr. Smith.

14 199. Defendant Officer Keyock then exited the NICU lobby/waiting area into the NICU
15 to speak with Defendant St. Luke's Hospital staff.

16 200. Defendant Officer Smith remained in the NICU lobby/waiting area next to Plaintiff
17 Mrs. Smith and between her and the elevator doors.

18 201. Plaintiff Mr. Smith went to use the restroom adjacent to the lobby and Defendant
19 Officer Smith escorted Plaintiff Mr. Smith to and from the restroom without cause.

20 202. Some minutes later Defendant Officer Keyock returned to the NICU lobby/waiting
21 area.

1 203. Defendant Officer Keyock brusquely conveyed to the Plaintiffs Mr. & Mrs. Smith
2 that they must immediately leave Defendant St. Luke's Property or else they would be
3 arrested for defiant trespassing.

4 204. Defendant Officer Keyock brusquely conveyed to the Plaintiffs Mr. & Mrs. Smith
5 that there was no way in which she would be able to stay with her newborn child,
6 Plaintiff Newborn baby J.A.S.

7 205. Neither Plaintiff Mr. nor Mrs. Smith were allowed to say goodbye to their child
8 suffering in the NICU.

9 206. The reason given for the ejection of Plaintiffs Mr. & Mrs. Smith from Defendant
10 St. Luke's Hospital premises was that Mrs. Smith was a methamphetamine addict and
11 that St. Luke's Hospital no longer would tolerate their presence on Defendant St. Luke's
12 Hospital property.

13 207. Defendant Mrs. Smith expressed concerns that she was breastfeeding and skin-
14 to-skin contact with her newborn child that were a major concern to both Plaintiffs Mr. &
15 Mrs. Smith.

16 208. Defendant Ms. Cynthia M. Shultz, MD was the senior doctor in charge of the
17 NICU on April 9th, 2021.

18 209. Plaintiff Mrs. Smith's concerns about breastfeeding and skin-to-skin contact were
19 orally directed towards Defendant Ms. Cynthia M. Shultz, MD.

20 210. From the perspective of the Plaintiffs Mr. & Mrs. Smith, Defendant Ms. Cynthia
21 M. Shultz, MD took a condescending attitude towards their concerns and flippantly
22 expressed to Plaintiffs Mr. & Mrs. Smith that Mrs. Smith's concerns "were no concerns
23 of hers."

1 211. Defendant Ms. Cynthia M. Shultz, MD asserted to Plaintiffs Mr. & Mrs. Smith that
2 they would be arrested even if the only reason that they returned to Defendant St.
3 Luke's Hospital's property was to pick up Plaintiff Newborn baby J.A.S. to take him
4 home.

5 212. Defendant St. Luke's Hospital instructed the Plaintiffs Mr. & Mrs. Smith to contact
6 Northampton County Children and Youth Services.

7 213. When Plaintiffs Mr. & Mrs. Smith contacted Northampton County CYS, they were
8 told that because Mr. & Mrs. Smith live in Monroe County and not Northampton County
9 that Plaintiffs would have to contact Monroe County Children and Youth Services.

10 214. Plaintiffs Mr. & Mrs. Smith contacted Monroe County CYS and were told that no
11 one would be available to examine the Plaintiffs case until the case was assigned to a
12 caseworker on Monday (it was currently Friday night).

13 215. In order to avoid arrest in addition to being separated from their child, Plaintiffs
14 Mr. & Mrs. Smith voluntarily left Defendant St. Luke's Hospital property without their
15 newborn child.

16 216. Leaving Defendant St. Luke's Hospital property under armed escort and under
17 threat of arrest while being forced to leave their newborn child in the NICU caused
18 Plaintiffs Mr. & Mrs. Smith devastating mental anguish.

19 217. Upon exiting Defendant St. Luke's Hospital, Plaintiffs Mr. & Mrs. Smith were
20 ordered to immediately leave the premises.

21 218. Plaintiffs could not immediately leave the premises because Officers Keyock and
22 Smith had each used a police car to block in Plaintiff Smith Family's SUV.

1 219. Defendant Officers had to be requested to move their police vehicles by Plaintiffs
2 Mr. & Mrs. Smith so that Plaintiffs could exit the property.

3 220. As Plaintiff Mrs. Smith exited the hospital she began to suffer from a debilitating
4 and devastating anxiety attack.

5 221. Plaintiffs Mr. & Mrs. Smith proceeded directly home to Tobyhanna in Monroe
6 County, PA.

7 222. Plaintiffs Mr. & Mrs. Smith arrived home from Defendant St. Luke's Hospital in
8 the early morning hours of Saturday, April 10th, 2021.

9 223. Plaintiffs Mr. & Mrs. Smith had a great deal of difficulty sleeping because of
10 psychological trauma.

11 224. Later, on the morning of April 10th, 2021 Plaintiffs Mr. & Mrs. Smith recorded a
12 video that they posted to the internet explaining their situation with Defendant St. Luke's
13 Hospital in an effort to bring attention to the injustices against the Smith Family.

14 225. A network of family and friends helped to disseminate the Plaintiffs video plea for
15 help.

16 226. On April 10th, 2021 at approximately 5:45 pm a representative of Defendant St.
17 Luke's Hospital phoned Plaintiff Mrs. Smith to inform Mrs. Smith, that as a result of
18 decisions by the Defendant St. Luke's Hospital's Legal Department, that she was
19 allowed to come back into the hospital to care for her son.

20 227. The representative of Defendant St. Luke's Hospital informed Plaintiff Mrs. Smith
21 that Plaintiff Mr. Smith would not be allowed to return to Defendant St. Luke's Hospital.

1 228. The representative of Defendant St. Luke's Hospital informed Plaintiff Mrs. Smith
2 the reason that she was allowed to return to Defendant St. Luke's Hospital was because
3 "she was not the problem".

4 229. Plaintiffs Mr. & Mrs. Smith were confused as to a rationale that strongly implied
5 that Mr. Smith was the cause of the Plaintiffs ejection from Defendant St. Luke's
6 Hospital the previous night when it was made clear to the Plaintiffs that the reason that
7 they were being ejected from Defendant St. Luke's Hospital property was because
8 Defendant St. Luke's Hospital would no longer tolerate the presence of a
9 methamphetamine addict and child abuser such as Plaintiff Mrs. Smith.

10 230. At approximately 7:10 pm Plaintiff Mrs. Smith was allowed to return to Defendant
11 St. Luke's Hospital property.

12 231. At no time did Defendant St. Luke's Hospital rescind the no trespass order with
13 the Bethlehem Township Police Department with respect to Plaintiff Mrs. Smith.

14 232. Upon arrival, the entrance to the Women and Children's Pavilion was locked, and
15 the entrance lights were turned off.

16 233. Plaintiff Mrs. Smith has a longstanding knee injury for which she daily wears a
17 knee brace.

18 234. Postpartum Plaintiff Mrs. Smith was assisted by her parents to the main entrance
19 of Defendant St. Luke's Hospital and then had to walk that same distance back
20 internally inside the hospital to reach the receptionist desk on the second floor.

21 235. No wheelchairs were located at the main entrance, nor in the Women and
22 Children's Pavilion of Defendant St. Luke's Hospital.

1 236. The same receptionist that initially improperly checked in Plaintiff Mrs. Smith on
2 April 8th, 2021 was working when Mrs. Smith approached the receptionist desk with her
3 parent's assistance.

4 237. Plaintiff Mrs. Smith stated to the receptionist through her mask that she was,
5 "Julian's Mom."

6 238. The receptionist, without asking for identification or any other relevant questions,
7 picked up a phone near to her and stated into it, "Julian's Mom is here. Yeah, she's in
8 the lobby."

9 239. After several minutes a male guard escorted Plaintiff Mrs. Smith through the
10 double doors of the NICU to Plaintiff Newborn baby J.A.S.'s NICU pod.

11 240. Plaintiff Mrs. Smith noticed that Plaintiff Newborn baby J.A.S.'s NICU pod had a
12 number written on the outside of his pod, as opposed to a printed version of his name
13 being outside of his NICU pod, which would have been in-kind with the NICU pods
14 surrounding his own.

15 241. Between when Plaintiff Mrs. Smith was initially contacted by Defendant St.
16 Luke's Hospital earlier in the evening and when she actually arrived at the hospital, the
17 nurses shifts had changed.

18 242. Late into the seven o'clock hour Plaintiff Mrs. Smith's parents waited for her in
19 the lobby because it was not known yet whether or not Mrs. Smith would be allowed to
20 remain over night with Plaintiff Newborn baby J.A.S.

21 243. The current nurse on duty in the NICU was unsure if Plaintiff Mrs. Smith would be
22 allowed to remain the night with Plaintiff Newborn baby J.A.S. in the NICU, and the
23 nurse sought out such knowledge from a superior.

1 244. Some time thereafter it was affirmed to Plaintiff Mrs. Smith that she may remain
2 the night with her newborn son.

3 245. At approximately 7:51 pm Plaintiff Mrs. Smith phoned her parents who were
4 waiting in the NICU lobby/waiting area and informed them that she would be staying
5 and that they could leave the hospital.

6 246. Defendant male security guards were placed around the clock outside of Plaintiff
7 Newborn baby J.A.S.'s NICU pod to constantly observe the behavior of Plaintiff Mrs.
8 Smith.

9 247. The pillow and blanket that Plaintiff Mrs. Smith used the day before when she
10 was a patient were left behind and Plaintiff Mrs. Smith was able to use them.

11 248. On the night of April 10th-11th, postpartum and disabled Plaintiff Mrs. Smith
12 uncomfortably slept in an upright chair.

13 249. Plaintiff Mrs. Smith observed more wires attached to Plaintiff Newborn baby
14 J.A.S. than when Mrs. Smith had last observed Newborn baby J.A.S. on April 9th, 2021.

15 250. On the night of April 10th-11th, whenever Newborn baby J.A.S. needed to
16 breastfeed, postpartum and disabled Plaintiff Mrs. Smith would have to get up out of an
17 upright chair unaided, with a disabled knee, untangle and reorganize roughly half a
18 dozen cords and his breathing tube, and then extend all of that with enough slack
19 merely so she could feed Newborn baby J.A.S.

20 251. Whenever Newborn baby J.A.S.'s oxygen level would dip below ninety an alarm
21 would beep loudly.

1 252. If the alarm associated with Plaintiff Newborn baby J.A.S.'s oxygen level lasted
2 for approximately twenty to thirty seconds a nurse would attend to Newborn baby J.A.S.
3 and remedy the alarm.

4 253. Plaintiff Mrs. Smith observed that when Plaintiff Newborn baby J.A.S.'s oxygen
5 levels triggered the attendant alarm it was due to a cord or medical attachment to
6 Newborn baby J.A.S. slipping into a wrong position.

7 254. Plaintiff Mrs. Smith observed that roughly half of the time that Plaintiff Newborn
8 baby J.A.S.'s oxygen levels triggered the attendant alarm it was able to be remedied by
9 a NICU nurse making a slight tilt of Newborn baby J.A.S.'s head or neck.

10 255. At all times Plaintiff Newborn baby J.A.S.'s pod had curtains in the front of the
11 pod instead of a door.

12 256. In order to observe Plaintiff Mrs. Smith by male guards, nurses, and other
13 hospital staff and personnel the curtains to Newborn baby J.A.S.'s NICU pod were
14 always kept partially open.

15 257. Plaintiff Mrs. Smith was often observed by St. Luke's Hospital employees,
16 assigns, or agents through glass walls that surrounded Newborn baby J.A.S.'s NICU
17 pod.

18 258. Plaintiff Mrs. Smith was not allowed privacy at any time to breastfeed or to have
19 skin-to-skin contact with Plaintiff Newborn baby J.A.S.

20 259. Both to and from the restroom Plaintiff Mrs. Smith was observed by male hospital
21 guards each time she visited the facilities.

22 260. The Defendant male guard frequently and without cause would peek into
23 Newborn baby J.A.S.'s NICU pod.

1 261. The presence of the Defendant male guard intimidated an already traumatized
2 Plaintiff Mrs. Smith.

3 262. No accommodations were ever offered to Plaintiff Mrs. Smith as a postpartum
4 mother by any Defendant St. Luke's Hospital agent, employee, or assign.

5 263. No accommodations were ever offered to Plaintiff Mrs. Smith as an observably
6 disabled woman by any Defendant St. Luke's Hospital agent, employee, or assign.

7 264. On the morning of Sunday, April 11th, 2021 a new Defendant male security guard
8 was placed outside of Plaintiff Newborn baby J.A.S.'s NICU pod to observe the behavior
9 of Plaintiff Mrs. Smith.

10 265. Plaintiff Mrs. Smith began to suspect that the reason that she was under such
11 close observation and scrutiny was that Defendant St. Luke's Hospital suspected that
12 Plaintiff Mrs. Smith would attempt to consume methamphetamine on Defendant St.
13 Luke's Hospital property.

14 266. Plaintiff Mrs. Smith, in repeated acts of humiliation, felt compelled to make it clear
15 to male security guards that when she was going to the restroom, she was changing
16 padding between her legs to attend to postpartum bleeding.

17 267. Plaintiff Mrs. Smith suffered constant nervousness and anxiety from being under
18 constant scrutiny by Defendant St. Luke's Hospital employees, agents, or assigns,
19 down to feeling compelled to explain personal postpartum bodily functions to male
20 security guards.

21 268. At approximately 6:30 am on April 11th, 2021 the attending NICU nurse informed
22 Plaintiff Mrs. Smith that Newborn baby J.A.S. should be able to have his oxygen tubes
23 removed on that day.

1 269. Plaintiff Mrs. Smith requested to know how long it would be before Newborn baby
2 J.A.S. would be able to return home.

3 270. The attending NICU nurse informed Plaintiff Mrs. Smith that Newborn baby
4 J.A.S., "...needs to be stable off the air for twelve hours."

5 271. At approximately 9:50 am Plaintiff Newborn baby J.A.S. had his oxygen tube
6 removed and his antibiotic IV removed.

7 272. The attending NICU nurse informed Plaintiff Mrs. Smith about Newborn baby
8 J.A.S., that, "We would like to watch him for twenty-four hours after taking them off the
9 air."

10 273. From the perspective of Plaintiff Mrs. Smith, now every time she heard the alarm
11 for Newborn baby J.A.S.'s oxygen dip even slightly, that sound would trigger intense
12 anxiety.

13 274. Plaintiff Mrs. Smith was also informed of two new factual requirements before
14 Defendant St. Luke's Hospital would consider discharging Plaintiff newborn baby J.A.S.:
15 (1) Plaintiff Smith Family would have to be cleared for discharge by Children and Youth
16 Services; and, (2) Plaintiff Newborn baby J.A.S. would have to have a follow-up
17 appointment scheduled with a pediatrician, which should take place no later than
18 Wednesday, April 14th, 2021.

19 275. Since it was Sunday, April 11th, 2021, and Children and Youth Services would
20 not attend to the Smith Family Case until Monday, April 12th, 2021, and because it was
21 a Sunday and it was not possible to schedule a follow-up appointment on a Sunday
22 because pediatrician's offices are closed, and because an additional arbitrary twelve
23 hours to observe Plaintiff Newborn baby J.A.S. was rendered, it became evident to

1 Plaintiffs Mr. & Mrs. Smith that it would be impossible to return home that day with
2 Newborn baby J.A.S.

3 276. As it was approaching noon Plaintiff Mrs. Smith realized that she had not eaten
4 since arriving at the Defendant St. Luke's Hospital the previous day.

5 277. Defendant St. Luke's Hospital never offered postpartum and disabled Plaintiff
6 Mrs. Smith any food or drink while she attended Newborn baby J.A.S. in the NICU.

7 278. When Plaintiff Mrs. Smith informed the guard watching her that she was going to
8 the cafeteria the guard escorted her there.

9 279. A postpartum mother with a disabled knee hobbled a considerable distance at a
10 pace set by the guard that was too fast for her to the cafeteria without being offered a
11 wheelchair.

12 280. After reaching the cafeteria the guard went on his way elsewhere.

13 281. Plaintiff Mrs. Smith ordered food and sat down at a table to eat.

14 282. Plaintiff Mrs. Smith found it difficult to eat because of all of the stress and anxiety
15 she was suffering under given the present situation.

16 283. Plaintiff Mrs. Smith contacted her parents and emotionally unloaded on them for
17 some time.

18 284. Plaintiff Mrs. Smith was in the cafeteria for approximately forty-five minutes.

19 285. Plaintiff Mrs. Smith packed extra food into her purse for both dinner and
20 breakfast the next morning because being away from Newborn baby J.A.S., even within
21 the same building, and only for a short time, was having a debilitating effect on Mrs.
22 Smith's psyche.

1 286. Plaintiff Mrs. Smith slowly made her way back to Plaintiff Newborn baby J.A.S.'s
2 NICU pod.

3 287. Upon returning to the NICU Plaintiff Mrs. Smith was rounding a corner to the
4 nurse's station when she overheard a guard telling a nurse that was not related to
5 Newborn baby J.A.S.'s care or treatment, "...I'm not sure. I walked her down to the
6 cafeteria about an hour ago. Oh, here she is."

7 288. From the Plaintiff's perspective Mrs. Smith observed that she was the subject of
8 general conversation within Defendant St. Luke's Hospital regardless of their affiliation
9 with Newborn baby J.A.S. or Mrs. Smith.

10 289. At approximately noon on April 11th, 2021 a Defendant St. Luke's Hospital social
11 worker "Vanessa" visited Plaintiff Mrs. Smith at Plaintiff Newborn baby J.A.S.'s NICU
12 pod.

13 290. The Defendant St. Luke's Hospital Social Worker "Vanessa" spoke to Plaintiff
14 Mrs. Smith and conveyed a vague apology to Plaintiff Mrs. Smith for the actions of the
15 Defendant St. Luke's Hospital.

16 291. The Defendant St. Luke's Hospital Social Worker "Vanessa" also conveyed to
17 Plaintiff Mrs. Smith that a second Children and Youth Services report was made based
18 on the "incident" that took place on the evening of April 9th, 2021.

19 292. Because of the communications of the Defendant St. Luke's Hospital Social
20 Worker "Vanessa", Plaintiff Mrs. Smith was made aware for the first time that a second
21 report had been made to CYS without the knowledge of the Plaintiff Smith Family.

22 293. The Defendant St. Luke's Hospital Social Worker "Vanessa" also conveyed that
23 the Defendant St. Luke's Hospital and its employees, agents, and/or assigns were

1 following Defendant St. Luke's Hospital policy concerning how the "incident" played out
2 on the evening of April 9th, 2021.

3 294. The Defendant St. Luke's Hospital Social Worker "Vanessa" also conveyed that
4 the Defendant St. Luke's Hospital and its employees, agents, and/or assigns were
5 following Pennsylvania State Law concerning how the "incident" played out on the
6 evening of April 9th, 2021.

7 295. The Defendant St. Luke's Hospital Social Worker "Vanessa" never conveyed
8 which policies and procedures that Defendant St. Luke's Hospital was adhering to
9 concerning its treatment of the Plaintiff Smith Family.

10 296. The Defendant St. Luke's Hospital Social Worker "Vanessa" never conveyed
11 which laws that Defendant St. Luke's Hospital was adhering to concerning its treatment
12 of the Plaintiff Smith Family.

13 297. The Defendant St. Luke's Hospital Social Worker "Vanessa" also attempted to
14 convince Plaintiff Mrs. Smith that she still had custody of Plaintiff Newborn baby J.A.S.
15 despite the fact that Plaintiff Mrs. Smith did not have the ability to have control of
16 Newborn baby J.A.S.'s medical decisions, nor the right to terminate consent for
17 treatment as Plaintiff Mrs. Smith had unequivocally done two days before.

18 298. The Defendant St. Luke's Hospital Social Worker "Vanessa" also conveyed that
19 she had "been in touch with CYS" but that no one was available to handle this case
20 because it was the weekend.

21 299. The Defendant St. Luke's Hospital Social Worker "Vanessa" repeatedly asked
22 Plaintiff Mrs. Smith throughout their conversation if Mrs. Smith "had custody of her other
23 children."

1 300. On the afternoon of April 11th, 2021, Plaintiff Mrs. Smith's septuagenarian
2 parents arrived at Defendant St. Luke's Hospital and respectfully requested to speak
3 with the hospital administrator on duty that day to discuss the separation of their
4 children from their grandchildren.

5 301. The Defendant St. Luke's Hospital's response to Plaintiff Mrs. Smith
6 septuagenarian parent's request to speak with the current hospital administrator was
7 met with an order to immediate vacate the property or else Plaintiff Mrs. Smith's parents
8 would be arrested by the local police under a no trespass order.

9 302. At all times to Plaintiff Mrs. Smith septuagenarian parents were kind and
10 respectful to Defendant St. Luke's Hospital employees, agents, and assigns.

11 303. Throughout the course of the afternoon and evening of April 11th, multiple tests
12 were performed on Plaintiff Newborn baby J.A.S. against the will and consent of
13 Plaintiffs Mr. & Mrs. Smith.

14 304. On the morning of Monday, April 12th, 2021, against the will and consent of
15 Plaintiffs Mr. & Mrs. Smith, another bilirubin test was performed on Plaintiff Newborn
16 baby J.A.S. by the employees, agents, or assigns of Defendant St. Luke's Hospital.

17 305. Plaintiff Mrs. Smith was informed by a representative of Defendant St. Luke's
18 Hospital that Plaintiff Newborn baby J.A.S. would not be able to be discharged until the
19 results of the bilirubin test came back from the lab.

20 306. Defendant Ms. Patricia Bates, CRNP, while acting on behalf of her employer(s)
21 acted as and employee, agent, or assign of Defendant St. Luke's Hospital lulled a
22 vulnerable Plaintiff Mrs. Smith into a conversation that enticed Mrs. Smith to express
23 her feelings about herself.

1 307. Plaintiff Mrs. Smith was under the impression that Defendant Ms. Bates, CRNP
2 was attempting to sympathize with her when Plaintiff Mrs. Smith confessed the depths
3 of her misery to Defendant Ms. Patricia Bates, CRNP.

4 308. At the conclusion of Plaintiff Mrs. Smith's expressions of her misery and
5 anxieties, Defendant Ms. Patricia Bates, CRNP stated to Plaintiff Mrs. Smith, "I don't
6 care if you were the preacher's daughter, we're required to report it by law."

7 309. From the perspective of Plaintiff Mrs. Smith, she felt that she was being called
8 inherently immoral because she did not represent the apparent moral paragon of a
9 "preacher's daughter".

10 310. From the perspective of Plaintiff Mrs. Smith, she thought that the intent behind
11 Defendant Ms. Patricia Bates, CRNP's words were that there did not exist any room
12 within existing Pennsylvania Law for the Defendant St. Luke's Hospital to deviate from
13 any policy for affirmatively contacting state children and youth services if a postpartum
14 mother tests positive for amphetamines at Defendant St. Luke's Hospital.

15 311. At approximately 10:30 am on April 12th, 2021 a representative of Defendant
16 Monroe County Children & Youth Services, Mr. Tim Shaw arrived at Defendant St.
17 Luke's Hospital and interviewed Plaintiff Mrs. Smith.

18 312. Defendant Mr. Tim Shaw took pictures of Mrs. Smith's ID, prescription pill bottles,
19 and prescription marijuana card.

20 313. Defendant Mr. Tim Shaw personally escorted Plaintiff Mrs. Smith to and from a
21 restroom to collect a urine sample to test for illegal drugs.

1 314. Defendant Mr. Tim Shaw, on the way to the restroom to collect the urine sample
2 from Plaintiff Mrs. Smith inquired of Mrs. Smith, “Has the security guard been there all
3 weekend?”

4 315. Plaintiff Mrs. Smith responded to Defendant Mr. Shaw’s inquiry.

5 316. Defendant Mr. Tim Shaw then represented to Plaintiff Mrs. Smith, “I’ve never
6 seen anything like that. We [CYS] told them [Defendant St. Luke’s Hospital] on the 10th
7 [April 10th, 2021] that you were ok to be alone there with the baby.”

8 317. When Defendant Mr. Shaw exited Newborn baby J.A.S.’s NICU pod after having
9 a confidential conversation with Plaintiff Mrs. Smith, he pulled back the curtains to find
10 the Defendant St. Luke’s Hospital social worker immediately on the other side of the
11 curtain eavesdropping on the conversation between Plaintiff Mrs. Smith and Defendant
12 Mr. Shaw.

13 318. Simultaneously, at approximately 10:30 am on April 12th, 2021 a representative
14 of Defendant Monroe County Children & Youth Services, Mr. Jorge Manteria arrived at
15 Plaintiffs Mr. & Mrs. Smith’s personal residence and interviewed Plaintiff Mr. Smith.

16 319. Upon arrival to the Plaintiff Smith residence, Defendant Mr. Jorge Manteria was
17 literally shaking with fear at the thought of approaching Plaintiff Mr. Smith.

18 320. At all times in the presence of Defendant Mr. Jorge Manteria, Plaintiff Mr. Smith
19 was kind to Mr. Manteria and maintained the demeanor of a reasonable and friendly
20 person.

21 321. Because of the welcoming demeanor of Plaintiff Mr. Smith, Defendant Mr.
22 Manteria calmed down and literally stopped shaking.

1 322. Soon thereafter, Defendant Mr. Manteria became open and friendly with Plaintiff
2 Mr. Smith.

3 323. Defendant Mr. Manteria represented to Plaintiff Mr. Smith that a second report to
4 Monroe County Children & Youth Services had been made by Defendant St. Luke's
5 Hospital about Mr. Smith, portraying him as "aggressive" and "violent".

6 324. Defendant Mr. Manteria specifically instructed Plaintiff Mr. Smith that even
7 though his supervisor Defendant Mr. Tim Shaw wanted Defendant Mr. Manteria to
8 obtain a urine sample from Plaintiff Mr. Smith for illegal drug testing, Mr. Manteria
9 specifically advised Plaintiff Mr. Smith to not do so.

10 325. Plaintiff Mr. Smith heeded the advice of Defendant Mr. Manteria and did not
11 submit urine for an illegal drug test.

12 326. Defendant Mr. Manteria left the Smith Family household with a positive image of
13 the Smith Family which was contradictory to the reports of Plaintiff Mr. Smith being of an
14 "aggressive" and "violent" nature.

15 327. Regardless of the nature of the interview Plaintiff Mr. Smith was forced to testify
16 against his consent and better judgement about personal family matters to Defendant
17 Mr. Jorge Manteria.

18 328. Defendant Mr. Jorge Manteria also made it clear to Plaintiff Mr. Smith that his
19 superior Mr. Tim Shaw required Plaintiff Mr. Smith sign particular paperwork relating to
20 the case regarding giving consent or a lack thereof concerning a range of issues in the
21 instant situation.

1 329. Soon after Defendant Mr. Jorge Manteria left the Plaintiff Smith Family
2 Residence Plaintiff Mrs. Smith contacted Plaintiff Mr. Smith and they exchanged their
3 experiences.

4 330. When exiting Plaintiff Newborn baby J.A.S.'s NICU pod after speaking with
5 Plaintiff Mr. Smith on the phone, Plaintiff Mrs. Smith immediately noticed that the male
6 guard and Defendant St. Luke's Hospital social worker had left the vicinity.

7 331. Shortly thereafter Plaintiff Newborn baby J.A.S. was approved for discharge by
8 Defendant St. Luke's Hospital.

9 332. After Plaintiff Newborn baby J.A.S. was approved for discharge a "printer issue"
10 developed and it apparently became impossible to print out the appropriate discharge
11 paperwork for Plaintiff Newborn baby J.A.S.

12 333. The "printer issues" went on for approximately over an hour.

13 334. Eventually, a nurse printed Plaintiff Newborn baby J.A.S.'s on the back of a sheet
14 of stickers.

15 335. Plaintiff Mrs. Smith was made aware that Plaintiff Newborn baby J.A.S. still would
16 not be discharged until Plaintiff Mrs. Smith signed a document stating that her hospital
17 bracelet matched the bracelet worn by Plaintiff Newborn baby J.A.S.

18 336. Plaintiff Mrs. Smith did not have a bracelet on because she removed it when she
19 arrived home on the night of April 10th, 2021, and Defendant St. Luke's Hospital did not
20 ever provide her with a replacement.

21 337. Plaintiff Newborn baby J.A.S. did not have a bracelet on for an unknown reason.

1 338. Plaintiff Mrs. Smith signed the paper insisting that the bracelets match because
2 Defendant St. Luke's Hospital would not return Plaintiff Newborn baby J.A.S. to Plaintiff
3 Mrs. Smith unless Mrs. Smith signed the paperwork.

4 339. Postpartum and disabled Plaintiff Mrs. Smith was not offered a wheelchair when
5 exiting the Defendant St. Luke's Hospital.

6 340. Plaintiff Mrs. Smith was forced to request assistance from Defendant St. Luke's
7 Hospital Staff to carry belongings with her to the exit.

8 341. Plaintiff Mrs. Smith was told that Defendant St. Luke's Hospital would not provide
9 her with either a cart to assist with her baby and his belongings, or a wheelchair to
10 assist a disabled postpartum woman.

11 342. Plaintiff Mrs. Smith would have preferred to have had assistance from her
12 parents when exiting Defendant St. Luke's Hospital.

13 343. Plaintiff Mrs. Smith parents were not allowed to visit Defendant St. Luke's
14 Property under threat of arrest, but chose to risk arrest in order to pick up Mrs. Smith
15 and their grandchild Newborn baby J.A.S.

16 344. Plaintiff Mrs. Smith successfully exited Defendant St. Luke's Hospital without
17 further molestation by the Defendants on the afternoon of April 12th, 2021.

18 345. Injuries related to Newborn baby J.A.S. as a result of the abuse he suffered at
19 the hands of the Defendant St. Luke's Hospital and its employees, agents, and assigns
20 did not cease upon his exit from the Defendant hospital St. Luke's Hospital.

21 346. Over the course of the next few weeks Plaintiff Newborn baby J.A.S. developed
22 the potentially fatal condition of pyloric stenosis.

1 347. Plaintiff Newborn baby J.A.S. nearly died from dehydration resulting from pyloric
2 stenosis.

3 348. Plaintiff Newborn baby J.A.S. did not develop pyloric stenosis as a result of
4 genetic predisposition.

5 349. No males in the Smith family history have ever had the condition of pyloric
6 stenosis prior to Plaintiff Newborn baby J.A.S.

7 350. Upon information and belief, Plaintiff Newborn baby J.A.S. developed the
8 condition of pyloric stenosis from the unnecessary antibiotics administered to Plaintiff
9 Newborn baby J.A.S. by Defendant St. Luke's Hospital and its employees, agents, and
10 assigns.

11 351. Surgery was required to correct the condition of pyloric stenosis.

12 352. The surgery to correct the condition of pyloric stenosis was successfully
13 performed at Lehigh Valley Hospital.

14 **II. Facts II: Additional Necessary Points of Fact**

15 353. Plaintiff Mrs. Smith has not ever ingested methamphetamine.

16 354. Plaintiff Mrs. Smith has a long and well-documented history of ADHD.

17 355. ADHD is a recognized disability.

18 356. Vyvanse is a valid prescription for the treatment of ADHD.

19 357. Vyvanse is a prescription amphetamine.

20 358. Amphetamines and methamphetamine are chemically distinct substances from
21 one another.

22 359. Amphetamines and methamphetamine are chemically similar substances which
23 require sensitive testing to distinguish the difference between the two.

1 360. Testing positive for an amphetamine/methamphetamine combined test is not the
2 same as a test that distinguishes between legal amphetamines and illegal
3 methamphetamine.

4 361. Plaintiff Newborn baby J.A.S. did not demonstrate any signs or symptoms of
5 methamphetamine withdrawal.

6 362. Plaintiff Mrs. Smith did not demonstrate any signs or symptoms of
7 methamphetamine withdrawal.

8 363. No court order was ever obtained by any defendant party to remove Plaintiff
9 Newborn baby J.A.S. from the custody of his Plaintiff parents Mr. & Mrs. Smith.

10 364. The company that knowingly committed to a test that did not differentiate
11 between legal amphetamines and illegal methamphetamines is Defendant Anderson
12 Labs.

13 365. The time between Plaintiff Mrs. Smith being denied access to Plaintiff Newborn
14 baby J.A.S. exceeded twenty-four hours (approx. 7pm on April 9th, 2021 until approx.
15 10pm on April 10th, 2021).

16 366. In general, because of the cumulative actions of all of the Defendants, Plaintiff
17 Mrs. Smith was constantly made miserable by physical and mental discomforts and
18 anguish suffered both through a lack of kindness and any reasonable accommodations
19 for her comfort after she returned to Plaintiff Newborn baby J.A.S.'s NICU pod.

20 367. Plaintiff Mrs. Smith did not voluntarily discharge herself from the hospital, but was
21 forced off of St. Luke's Hospital's property under armed police escort.

22 368. Plaintiff Mr. Smith was not ever allowed to return to Plaintiff St. Luke's Hospital
23 property to be with his newborn child—Plaintiff Newborn baby J.A.S.

1 369. There is still currently (as of the date of initial filing) a no trespass order in effect
2 from Defendant St. Luke's Hospital against Plaintiffs Mr. & Mrs. Smith.

3 370. There is still currently (as of the date of initial filing) a no trespass order in effect
4 from Defendant St. Luke's Hospital against Plaintiffs Mrs. Smith's parents.

5 371. No defendant at any time explained the rationale for ejecting Plaintiffs Mr. & Mrs.
6 Smith from Defendant St. Luke's Hospital on the night of April 9th, 2021 to Plaintiffs Mr.&
7 Mrs. Smith.

8 372. No defendant at any time explained to Plaintiffs Mr. & Mrs. Smith their Miranda
9 Rights, including rights to counsel and against self-incrimination.

10 373. At no time was a legally mandated conference held between Plaintiffs Mr. & Mrs.
11 Smith by any defendant party to explain why Plaintiffs Mr. & Mrs. Smith were separated
12 from Plaintiff Newborn baby J.A.S.

13 374. At no time was a state-mandated written notice of the rationale for the detention
14 of Plaintiff Newborn baby J.A.S. to either of his parent Plaintiffs Mr. or Ms. Smith by any
15 Defendant Party.

16 375. Upon being allowed by Defendant St. Luke's Hospital to reunite with Plaintiff
17 Newborn baby J.A.S. on the night of April 10th, Plaintiff Mrs. Smith was not allowed to
18 have a support person present with her in Newborn baby J.A.S.'s NICU pod at any time.

19 376. Despite assertions by St. Luke's Hospital, its employees, assigns, agents, and
20 affiliates that Plaintiff Mrs. Smith ingested illegal methamphetamine, the deleterious
21 effects of which were supposedly passed along to Plaintiff Newborn baby J.A.S., neither
22 Defendant St. Luke's Hospital, nor and other defendant implemented state mandated
23 procedures for the treatment of methamphetamine withdrawal in newborn babies.

1 377. At no time did Defendant St. Luke's Hospital, its employees, assigns, agents, nor
2 any of its affiliates request that Plaintiff Mr. Smith submit to a urine drug screen.

3 378. At no time did Defendant St. Luke's Hospital, its employees, assigns, agents, nor
4 any of its affiliates offer a process by where their decision to separate the Plaintiff Smith
5 Family from one another could be appealed.

6 379. At no time did Defendant St. Luke's Hospital, its employees, assigns, agents, nor
7 any of its affiliates offer a state-mandated "manual of rights" to the Plaintiffs.

8 380. At no time did Defendant St. Luke's Hospital, its employees, assigns, agents, nor
9 any of its affiliates request to personally hear Plaintiff Mr. & Mrs. Smith's version of
10 events after Ms. Teresa Marlino, MD accused Plaintiff Mrs. Smith of methamphetamine
11 ingestion.

12 381. Plaintiffs Mr. & Mrs. Smith specifically requested from Defendant St. Luke's
13 Hospital and its agent, employees, or assigns to not apply ophthalmic solution to
14 Plaintiff Newborn baby J.A.S.'s eyes.

15 382. Plaintiffs Mr. & Mrs. Smith request to not apply ophthalmic solution to Plaintiff
16 Newborn baby J.A.S.'s eyes was denied by Defendant St. Luke's Hospital and its
17 agents, employees, or assigns.

18 383. Plaintiff Mr. Smith has a strong allergic reaction on penicillin and its derivatives
19 such as erythromycin.

20 384. No Defendant party ever requested that Plaintiff Mr. Smith submit to a drug test
21 of any type.

1 385. Because of concerns of an allergic reaction in Plaintiff Newborn baby J.A.S.,
2 Plaintiffs Mr. & Mrs. Smith requested that an ophthalmic solution other than
3 erythromycin be applied to Plaintiff Newborn baby J.A.S.

4 386. Plaintiffs Mr. & Mrs. Smith request for an ophthalmic solution other than
5 erythromycin to be applied to Plaintiff Newborn baby J.A.S. was denied without good
6 cause by Defendant St. Luke's Hospital and its agents, employees, and/or assigns.

7 387. Erythromycin ophthalmic solution was applied to Plaintiff Newborn baby J.A.S.
8 against the will and consent of his Plaintiff parents Mr. & Mrs. Smith.

9 388. Despite multiple requests, including through Plaintiff Smith Family's attorney, the
10 results of the urinary drug screen through Monroe County Children and Youth Services
11 that were collected from Plaintiff Mrs. Smith in Defendant St. Luke's Hospital were not
12 ever revealed to the Plaintiffs Mr. & Mrs. Smith.

13 389. Monroe County Children and Youth Services on ended its investigation into the
14 Plaintiff Smith Family only after Plaintiff Mrs. Smith submitted herself to a hair follicle
15 test at her own expense and tested negative for methamphetamine.

16 390. Not one person, not a single Defendant St. Luke's Hospital employee, agent,
17 assign, nor affiliate, not a single police officer, nor any employee of any state children
18 and youth agency, objected to the heinous treatment of Plaintiff Mrs. Smith as being
19 labeled someone who would abuse her newborn child through in-utero exposure to
20 methamphetamine; nor did anyone object to the traumatizing act of splitting up of the
21 Plaintiff Smith Family—not one person.

Legal Counts—Violations of U.S. Constitution &

§1983 Claims

I. First Amendment

Right to be Free from Compelled Speech

Mrs. Grace Smith v. St. Luke’s Hospital, Onsite Neonatal, Ms. Kimberly A. Butz, RN,

Ms. Patricia Bates, CRNP, & Ms. Dawn Hoffman

391. The First Amendment of the United States Constitution protects certain rights of speech, including, but not limited to, the right to be free from compelled speech.¹

392. Having already demonstrated that Defendants St. Luke’s Hospital and Onsite Neonatal would separate a mother without cause from her newborn child, as indeed that is exactly what happened on Friday April 9th, 2021, and, as Plaintiff Mrs. Smith was traumatized by the intentional actions of St. Luke’s Hospital and its agents, employees, and/or assigns aggressive actions, who forced Mrs. Smith under an armed police escort off of St. Luke’s Hospital property under threat of arrest; Plaintiff Mrs. Smith realized she

¹“When speech is compelled...additional damage is done. In that situation, individuals are coerced into betraying their convictions.” *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018).

1 was not in any position, at any time, to contradict the Defendant St. Luke's Hospital, its
2 agents, employees, or assigns.²

3 393. Under information and belief, Defendant St. Luke's Hospital placed a guard
4 outside of Newborn baby J.A.S.'s NICU unit who had open visual access to a
5 breastfeeding mother without regard to Plaintiff Mrs. Smith's dignity or privacy, leading
6 Plaintiff Mrs. Smith to further understand that she was not in any position to contradict
7 the Defendant St. Luke's Hospital, its agents, employees, or assigns.

8 394. Although Plaintiff Mrs. Smith understood that she may have appeared to have
9 rights to consent to Newborn baby J.A.S.'s care and treatment, in fact, Plaintiff Mrs.
10 Smith's speech was compelled because the Defendant St. Luke's Hospital made it clear
11 that there were not any circumstances under which she could object to anything being
12 given or done to Newborn baby J.A.S.

13 395. Plaintiff Mrs. Smith was told in no uncertain terms by Defendants Ms. Kimberly
14 A. Butz, RN, and Ms. Patricia Bates, CRNP, and either at the behest of or indirectly
15 assented to by Defendant St. Luke's Hospital Administrator Ms. Dawn Hoffman, that
16 despite records not reflecting the truth of the situation, Plaintiff Mrs. Smith would not be

²In [the] Restatement, Contracts, § 493, it is stated in subsection (e) that duress may be exercised by "any other wrongful acts that compel a person to manifest apparent assent to a transaction without his volition or cause such fear as to preclude him from exercising free will and judgment in entering into a transaction." *Tri-State Roofing Co. of U. v. Simon*, 187 Pa. Super. 17, 19 (Pa. Super. Ct. 1958).

1 permitted to take Newborn baby J.A.S. home until Plaintiff Mrs. Smith endorsed paper
2 work which she found questionable, false, or could not morally consent to.

3 396. Defendants St. Luke's Hospital and Onsite Neonatal's actions violated Plaintiff
4 Mrs. Smith's right to contract and consent freely, which are acts of compelled speech.

5 397. Upon information and belief, Defendants St. Luke's Hospital and Onsite
6 Neonatal, by virtue of custom, pattern, practice, policy, and/or failure to appropriately
7 train, supervise and/or discipline, authorizes its agents, employees, and/or assigns to
8 act in an unconstitutional manner by threatening postpartum women with adverse
9 consequences unless they fully comply with all assertions or statements made in the
10 record by St. Luke's Hospital and/or Onsite Neonatal, regardless of whether the mother
11 thinks such action is best for her newborn child, or herself, or contests the validity of any
12 paperwork.

13 398. Such compelled action violates the First Amendment to the United States
14 Constitution by compelling speech from Plaintiff Mrs. Smith in an affirmative manner,
15 regardless of her desire to affirm or contest a matter.

16 399. Furthermore, an undifferentiated drug test which does not conclusively
17 demonstrate a mother to be an illegal methamphetamine user, while it is apparent that
18 neither the newborn child nor the mother does not exhibit any signs or symptoms of
19 methamphetamine withdrawal, are not good faith grounds to compel speech in violation
20 of the First Amendment of the United States Constitution.

21 400. Upon information and belief, Defendants Ms. Kimberly A. Butz, RN, Ms. Patricia
22 Bates, CRNP and Ms. Dawn Hoffman, by virtue of following a custom, pattern, practice,
23 policy, and/or failure to appropriately train, supervise and/or discipline, did themselves

1 act in an unconstitutional manner by threatening a postpartum woman with unthinkable
2 adverse consequences unless she fully complied with everything Defendants Ms.
3 Kimberly A. Butz, RN, Ms. Patricia Bates, CRNP and Ms. Dawn Hoffman asserted,
4 regardless of whether the mother thought such action was best for her newborn child, or
5 herself, or if she contested the validity of any paperwork; such action violates the First
6 Amendment to the United States Constitution by compelling speech from Mrs. Smith in
7 an affirmative manner, regardless of her desire to affirm or contest a matter.

8 401. Upon information and belief, Plaintiff can demonstrate by a preponderance of
9 evidence that each of the Defendants conspired with at least one Defendant State Actor
10 elsewhere listed in this complaint.

11 402. The conspiracy between the Defendant parties and their agents, employees, or
12 assigns violates *42 U.S.C. § 1983*.

13 403. Upon information and belief, the Plaintiff Mrs. Smith can demonstrate by a
14 preponderance of evidence that the Defendant Private Entities St. Luke's Hospital and
15 Onsite Neonatal supervised one or more people in connection with this allegation and
16 are therefore liable under *Monell* legal theory imputing actions of a subordinate to their
17 employer, assignor, or individuals given agency by Defendants.

18 404. Defendants St. Luke's Hospital and Onsite Neonatal, through the actions of its
19 agents, employees, or assigns, violated Plaintiff's rights under the First Amendment to
20 the United States Constitution.

21 405. Plaintiff Mrs. Smith asserts this claim pursuant to *42 U.S.C. § 1983*.

22 406. Plaintiff Mrs. Smith has suffered substantial harm as a result of Defendants'
23 conduct, including but not limited to, emotional and psychological distress, pain and

1 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
2 appropriate compensatory damages to account for PTSD therapies and other related
3 treatments as they have been and will continue to be necessary; Plaintiff respectfully
4 requests an amount of \$59,500 in compensatory damages per Defendant.

5 407. Given the substantial wealth of the Defendants St. Luke's Hospital and Onsite
6 Neonatal, and therefore, their ability to afford the appropriate training to avoid this
7 egregious violation of the U.S. Constitution, and Defendants Ms. Kimberly A. Butz, RN,
8 and Ms. Patricia Bates, CRNP since harm was actually caused to the current Plaintiff
9 Mrs. Smith, and since harm is likely to continue to harm future postpartum mothers, and
10 because the acts of the Defendants and their agents, assigns, or employees callously
11 disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs
12 respectfully request the imposition of punitive damages on Defendants St. Luke's
13 Hospital, Onsite Neonatal, Ms. Kimberly A. Butz, RN, and Ms. Patricia Bates, CRNP to
14 deter such Defendants from committing to such conduct in the future that violates the
15 First Amendment of the United States Constitution Plaintiff respectfully requests an
16 amount of \$1,000,000 in punitive damages per Defendant Ms. Kimberly A. Butz, RN,
17 and Ms. Patricia Bates, CRNP; \$5,000,000 for Defendant Ms. Dawn Hoffman; and
18 \$10,000,000 per each separate Defendant St. Luke's Hospital and Onsite Neonatal.

19 408. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered
20 any actual injury despite the deprivation of her federal rights, the Plaintiff respectfully
21 requests a nominal judgment of \$1.00.

22 **II. First Amendment**

23 **Right to be Free from Compelled Speech**

1 Mrs. Grace Smith v. Monroe County, Ms. Adelaide. W. Grace, & Mr. Tim Shaw

2 409. The First Amendment of the United States Constitution protects certain rights of
3 speech, including, but not limited to, the right to be free from compelled speech.³

4 410. Having already demonstrated that Defendant Monroe County Child and Youth
5 Services would endorse and encourage St. Luke's Hospital to aggressively and without
6 cause separate a mother from her newborn child and/or encourage violations into the
7 Plaintiff Mrs. Smith's private family life, as happened on Friday April 9th, 2021, Plaintiff
8 Mrs. Smith was traumatized by the intentional actions of Defendant St. Luke's Hospital,
9 who with an armed police escort, forcibly discharged and physically ejected Mrs. Smith
10 from St. Luke's Hospital property under threat of arrest.⁴

11 411. Plaintiff Mrs. Smith was instructed by representatives of St. Luke's Hospital to
12 contact the on-call Defendant Monroe County Child and Youth Services representative
13 who informed Mrs. Smith that there was not anything that Defendant Monroe County
14 Child and Youth Services would do to attempt to remedy the current custody situation

³"When speech is compelled...additional damage is done. In that situation, individuals are coerced into betraying their convictions." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018).

⁴In [the] Restatement, Contracts, § 493, it is stated in subsection (e) that duress may be exercised by "any other wrongful acts that compel a person to manifest apparent assent to a transaction without his volition or cause such fear as to preclude him from exercising free will and judgment in entering into a transaction." *Tri-State Roofing Co. of U. v. Simon*, 187 Pa. Super. 17, 19 (Pa. Super. Ct. 1958).

1 until a caseworker was assigned to Plaintiff Mrs. Smith on the following Monday, April
2 12th, 2021.

3 412. At the time of Plaintiff's advisement by Monroe County Child and Youth Services
4 it was the evening on Friday, April 9th, 2021.

5 413. Mrs. Smith realized she was not in any position to contradict Defendant Monroe
6 County Child and Youth Services, its agents, employees, or assigns, lest she lose her
7 children to Defendant Monroe County Child and Youth Services.

8 414. Defendants Ms. Adelaide Grace and Mr. Tim Shaw were likely aware that St.
9 Luke's Hospital placed a guard outside of Newborn baby J.A.S.'s NICU unit who had
10 unfettered visual access to a breastfeeding mother without regard to Mrs. Smith's
11 dignity or privacy, led Mrs. Smith to realize that she was not in any position to contradict
12 the hospital, its agents, employees, or assigns.

13 415. Although there was no good faith reason based on any articulable reasonable
14 suspicion that Plaintiff Mrs. Smith had at any time consumed illegal methamphetamine,
15 and with several records directly to the contrary of that assertion, Defendant Monroe
16 County, through Child and Youth Services refused to acknowledge, review, or adhere to
17 such facts; and therefore, Plaintiff Mrs. Smith was compelled to take further drug tests
18 under escort of guard by Defendant St. Luke's Hospital and a representative of
19 Defendant Monroe County Child and Youth Services.

20 416. Out of fear for losing her freedom or any of her children to Defendant Monroe
21 County Child and Youth Services, Plaintiff Mrs. Smith was compelled to agree in writing
22 to the additional unnecessary tests against her consent and better judgement.

1 417. Upon information and belief, Defendants Monroe County Child and Youth
2 Services, Ms. Adelaide. W. Grace, and Mr. Tim Shaw, by virtue of custom, pattern,
3 practice, policy, and/or failure to appropriately train, supervise, and/or discipline,
4 authorizes its agents, employees, and/or assigns to act in an unconstitutional manner
5 by threatening women with adverse consequences unless they fully comply with all
6 assertions or statements made in record by Defendant Monroe County Child and Youth
7 Services, regardless of whether the mother thinks such action is best for her newborn
8 child, or herself, or contests the validity of any paperwork; such action violates the First
9 Amendment to the United States Constitution by compelling speech from Plaintiff Mrs.
10 Smith in an affirmative manner, regardless of her desire to affirm or contest a matter.

11 418. An undifferentiated drug test which does not conclusively demonstrate a mother
12 to be an illegal methamphetamine user, considered in conjunction with the fact that
13 neither the newborn child nor the mother exhibited any signs or symptoms of
14 methamphetamine withdrawal are not good faith grounds to compel Plaintiff Mrs.
15 Smith's speech in violation of the First Amendment of the United States Constitution.

16 419. Upon information and belief, Plaintiff Mrs. Smith can demonstrate by a
17 preponderance of evidence that the Defendant State Actors conspired with at least one
18 Defendant Private Actor elsewhere listed in this complaint.

19 420. The conspiracy between the Defendant parties and their agents, employees, or
20 assigns violates *42 U.S.C. § 1983*.

21 421. Upon information and belief, Plaintiff Mrs. Smith can demonstrate by a
22 preponderance of the evidence that Defendant Mr. Tim Shaw violated Plaintiff Mrs.
23 Smith's federal rights, and that supervisor Defendant Ms. Adelaide Grace should be

1 held liable for conduct of subordinate Mr. Tim Shaw, because as supervisor directed the
2 actions in question, or had actual knowledge of the violation and acquiesced to it, or
3 with deliberate indifference to the consequences, established and maintained a policy,
4 practice or custom which directly caused the violation under a *Monell* legal theory.

5 422. Defendants Ms. Adelaide Grace and Mr. Tim Shaw acting under color of law, and
6 as an agent, employee, or assign of Defendant Monroe County Child and Youth
7 Services, through their actions violated Plaintiff's rights under the First Amendment to
8 the United States Constitution.

9 423. Plaintiff asserts this claim pursuant to 42 U.S.C. § 1983.

10 424. Plaintiff has suffered substantial harm as a result of Defendants' conduct,
11 including but not limited to, emotional and psychological distress, pain and suffering,
12 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
13 compensatory damages to account for PTSD therapies and other related treatments as
14 they have been and will continue to be necessary; Plaintiff respectfully requests an
15 amount of \$59,500 in compensatory damages per Defendant.

16 425. Defendants Monroe County through its Office of Children and Youth Services, is
17 legally obligated to appropriately train its state actor employees to avoid this egregious
18 violation of the U.S. Constitution, and since harm was actually caused to the current
19 Plaintiff Mrs. Smith, and since harm is likely to continue to harm future postpartum
20 mothers, and because the acts of the Defendants and their agents, assigns, or
21 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
22 the Plaintiffs respectfully request the imposition of punitive damages on Defendants
23 Monroe County and Adelaide W. Grace to deter such Defendants from committing such

conduct in the future which violates the First Amendment of the United States Constitution Plaintiff respectfully requests an amount of \$1,000,000 in punitive damages for Defendant Mr. Tim Shaw; \$5,000,000 for Defendant Adelaide W. Grace; and \$10,000,000 for Defendant Monroe County.

426. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered any actual injury despite the deprivation of her federal rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

III. First Amendment

Right to be Free from Compelled Speech

Mr. Michael O. Smith v. Monroe County, Ms. Adelaide. W. Grace, Mr. Tim Shaw, &

Mr. Jorge Manteria

427. The First Amendment of the United States Constitution protects certain rights of speech, including, but not limited to, the right to be free from compelled speech.⁵

428. Having already demonstrated that Monroe County Child and Youth Services would endorse and encourage St. Luke's Hospital to aggressively and without cause separate a mother and father from their newborn child, as happened on Friday April 9th, 2021, Plaintiff Mr. Smith was traumatized by the intentional actions of Defendant St.

⁵ "When speech is compelled...additional damage is done. In that situation, individuals are coerced into betraying their convictions." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018).

1 Luke's forcible actions, who under an armed police escort, forced Plaintiff Mr. Smith off
2 of St. Luke's Hospital property under threat of arrest.⁶

3 429. Plaintiff Mr. Smith realized he was not in any position to contradict Defendant
4 Monroe County Child and Youth Services, its agents, employees, or assigns, lest he
5 lose his freedom or his children to Defendant Monroe County Child and Youth Services.

6 430. Upon information and belief, Defendants Monroe County Child and Youth
7 Services, Ms. A.W. Grace, Mr. Tim Shaw, and Mr. Jorge Manteria, by virtue of custom,
8 pattern, practice, policy, and/or failure to appropriately train, supervise and/or discipline,
9 authorizes its agents, employees, and/or assigns to act in an unconstitutional manner
10 by threatening fathers with adverse consequences unless they fully comply with
11 everything Defendant Monroe County Child and Youth Services asserts, regardless of
12 whether the father thinks such action is best for his newborn child, himself, or family, or
13 contests the validity of any paperwork; such action violates the First Amendment to the
14 United States Constitution by compelling speech from Plaintiff Mr. Smith in an
15 affirmative manner, regardless of his desire to affirm or contest a matter.

16 431. The same undifferentiated drug test which does not conclusively demonstrate a
17 mother to be an illegal methamphetamine user, considered in conjunction with the fact

⁶In [the] Restatement, Contracts, § 493, it is stated in subsection (e) that duress may be exercised by "any other wrongful acts that compel a person to manifest apparent assent to a transaction without his volition or cause such fear as to preclude him from exercising free will and judgment in entering into a transaction." *Tri-State Roofing Co. of U. v. Simon*, 187 Pa. Super. 17, 19 (Pa. Super. Ct. 1958).

1 that neither the newborn child nor the mother exhibited any signs or symptoms of
2 methamphetamine withdrawal is not grounds to illegally compel speech from the child's
3 legal father in violation of the First Amendment of the United States Constitution.

4 432. Upon information and belief, Plaintiff can demonstrate by a preponderance of
5 evidence that the Defendant State Actors conspired with at least one Defendant Private
6 Actor elsewhere listed in this complaint.

7 433. The conspiracy between the Defendant parties and their agents, employees, or
8 assigns violates 42 U.S.C. § 1983.

9 434. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
10 preponderance of the evidence that Mr. Jorge Manteria violated Mr. Smith's federal
11 rights, and that supervisor Defendants Ms. Adelaide Grace and Mr. Tim Shaw should be
12 held liable for conduct of subordinate Mr. Jorge Manteria, because as supervisors
13 directed the actions in question, or had actual knowledge of the violation and
14 acquiesced to it, or with deliberate indifference to the consequences, established and
15 maintained a policy, practice or custom which directly caused the violation under a
16 *Monell* legal theory.

17 435. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
18 preponderance of the evidence that Mr. Tim Shaw violated Mr. Smith's federal rights,
19 and that supervisor Defendant Ms. Adelaide Grace should be held liable for conduct of
20 subordinate Mr. Tim Shaw, because as supervisor directed the actions in question, or
21 had actual knowledge of the violation and acquiesced to it, or with deliberate
22 indifference to the consequences, established and maintained a policy, practice or
23 custom which directly caused the violation under a *Monell* legal theory.

1 436. Defendants Ms. Adelaide Grace, Mr. Tim Shaw, & Mr. Jorge Manteria, acting
2 under color of law, through Defendant Monroe County, through the actions of its Office
3 of Child & Youth Services, violated Plaintiff's rights under the First Amendment to the
4 United States Constitution.

5 437. Plaintiff asserts this claim pursuant to *42 U.S.C. § 1983*.

6 438. Plaintiff Mr. Smith has suffered substantial harm as a result of Defendants'
7 conduct, including but not limited to, emotional and psychological distress, pain and
8 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
9 appropriate compensatory damages to account for PTSD therapies and other related
10 treatments as they have been and will continue to be necessary; Plaintiff respectfully
11 requests an amount of \$59,500 in compensatory damages per Defendant.

12 439. Defendant Monroe County through its Office of Children and Youth Services, is
13 legally obligated to appropriately train its state actor employees to avoid this egregious
14 violation of the U.S. Constitution, and since harm was actually caused to the current
15 Plaintiff Mr. Smith, and since harm is likely to continue to harm future fathers, and
16 because the acts of the Defendants and their agents, assigns, or employees callously
17 disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff
18 respectfully requests the imposition of punitive damages on Defendants Monroe
19 County, Ms. Adelaide W. Grace, & Mr. Tim Shaw to deter such Defendants from
20 committing such conduct in the future which violates the First Amendment of the United
21 States Constitution Plaintiff respectfully requests an amount of \$1,000,000 in punitive
22 damages per Defendants Mr. Tim Shaw and Mr. Jorge Manteria; \$5,000,000 for
23 Defendant Adelaide W. Grace; and \$10,000,000 for Defendant Monroe County.

1 440. In the unlikely event that the jury does not find that Plaintiff Mr. Smith suffered
2 any actual injury despite the deprivation of his federal rights, the Plaintiff respectfully
3 requests a nominal judgment of \$1.00.

4 **IV. Fourth Amendment**

5 *Right to be Free from Unlawful Seizure*

6 Smith, et al. v. Northampton County, Bethlehem Township Officers Andrew

7 Keyock and Thomas A. Smith, Corporal Kirk Harryn, & Chief Daniel G. Pancoast

8 441. The Fourth Amendment to the United States Constitution protects people from
9 being subjected to unreasonable seizures by the police.

10 442. A law enforcement officer may only seize a person if there is appropriate
11 justification to do so.

12 443. Upon information and belief, Plaintiffs Mr. and Mrs. Smith and Newborn baby
13 J.A.S. can demonstrate that Defendants Northampton County, acting through its
14 Defendant Officers Andrew Keyock and Thomas A. Smith, while under color of law (1)
15 intentionally held Plaintiffs Mr. and Mrs. Smith apart from Newborn baby J.A.S. without
16 consent from his parents and under threat of arrest; (2) the acts of withholding Newborn
17 baby J.A.S. from his parents Plaintiffs Mr. and Mrs. Smith, are, but are not limited to,
18 keeping Newborn baby J.A.S. separated from his parents against their will, police
19 blocking Plaintiff Mr. Smith's vehicle from exiting the hospital grounds, which were only
20 moved upon Plaintiff Mr. Smith's request to leave so as to not be arrested, and indeed,
21 the constant threat of arrest if Mr. and Mrs. Smith did not leave their newborn child with

1 St. Luke's hospital and without his parents; and, (3) the seizures of Plaintiffs Mr. and
 2 Mrs. Smith and Newborn baby J.A.S. were unreasonable.

3 444. "[A] Fourth Amendment seizure . . . [occurs] only when there is a governmental
 4 termination of freedom of movement *through means intentionally applied*."⁷

5 445. The U.S. Supreme Court has subsequently refined this test and it now asks,
 6 "[W]hether a reasonable person would feel free to decline the officers' requests or
 7 otherwise terminate the encounter."⁸

8 446. Upon information and belief, Plaintiffs Mr. & Mrs. Smith assert that when they
 9 were forcefully withheld from being with their newborn baby against their consent, that
 10 the force necessary to prevent their reunion was through means intentionally applied by
 11 Defendant Officers Andrew Keyock and Thomas A. Smith.

12 447. Upon information and belief, Plaintiffs Mr. and Mrs. Smith were not reasonably
 13 able to terminate their encounter with the police while remaining in the hospital with
 14 Plaintiff Newborn baby J.A.S., or by taking newborn baby J.A.S. away from St. Luke's

⁷*Brower v. County of Inyo*, 489 U.S. 593, 596-97 (1989) (emphasis in original).

⁸*United States v. Drayton*, 536 U.S. 194, 202 (2002) (quoting *Florida v. Bostick*, 501 U.S. 429, 436 (1991)); *see also Drayton*, 536 U.S. at 202 (noting that "[t]he reasonable person test . . . is objective and 'presupposes an *innocent person*'" (quoting *Bostick*, 501 U.S. at 438)); *See also, James v. City of Wilkes-Barre*, 700 F.3d 675 (3d Cir. 2012) ("[I]ntimidating police behavior might, under some circumstances, cause one to reasonably believe that compliance is compelled").

1 Hospital; and, Newborn baby J.A.S. did not have the ability to consent to his own
2 confinement away from his parents.

3 448. Upon information and belief Defendant Officers did not presuppose that Plaintiff's
4 Mr. and Mrs. Smith were innocent of harming their child.

5 449. Upon information and belief, Defendant Officers Andrew Keyock and Thomas A.
6 Smith had no reason to suspect Newborn baby J.A.S. had or was going to commit a
7 crime, and therefore had no cause to detain him.

8 450. Upon information and belief, Northampton County and/or Bethlehem Township,
9 through the acts of Officers Andrew Keyock, and Thomas A. Smith, acting under color
10 of law, by virtue of custom, pattern, practice, policy, lack of supervision and/or failure to
11 appropriately train and/or discipline, authorizes its police officers to act in an
12 unconstitutional fashion by having neither a court order, nor reasonable suspicion of a
13 crime being committed by any of the Plaintiffs, did seize a Newborn baby child, as well
14 as seizing his parents, and such seizure is based solely on a report that the hospital had
15 unconfirmed and undifferentiated drug test results for both legal amphetamines and
16 illegal methamphetamines, and without any basis to believe that the mother abused or
17 neglected her child, or that mother or child were treated for methamphetamine
18 withdrawal related to Plaintiff Mrs. Smith's or Newborn baby J.A.S.'s alleged condition.

19 451. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
20 evidence that the Defendant State Actors conspired with at least one Defendant Private
21 Actor elsewhere listed in this complaint.

22 452. The conspiracy between the Defendant parties and their agents, employees, or
23 assigns violates *42 U.S.C. § 1983*.

1 453. Upon information and belief, Plaintiff Smith Family can demonstrate by a
2 preponderance of the evidence that Officers Andrew Keyock and Thomas A. Smith
3 violated Plaintiff Smith Family's federal rights, and that supervisor Defendants Corporal
4 Kirk Harryn, and Chief Daniel G. Pancoast should be held liable for conduct of
5 subordinates Officers Andrew Keyock and Thomas A. Smith, because as supervisors
6 directed the actions in question, or had actual knowledge of the violation and
7 acquiesced to it, or with deliberate indifference to the consequences, established and
8 maintained a policy, practice or custom which directly caused the violation under a
9 *Monell* legal theory.

10 454. Defendants Northampton County and/or Bethlehem Township, through the
11 actions of its Defendant Officers Andrew Keyock, Thomas A. Smith, Corporal Kirk
12 Harryn, and Chief Daniel G. Pancoast of the Bethlehem Police Department, violated
13 Plaintiff's rights under the Fourth Amendment of the United States Constitution.

14 455. Plaintiffs assert this claim pursuant to *42 U.S.C. § 1983*.

15 456. Plaintiff Mr. Smith has suffered substantial harm as a result of Defendants'
16 conduct, including but not limited to, emotional and psychological distress, pain and
17 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
18 appropriate compensatory damages to account for PTSD therapies and other related
19 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
20 request an amount of \$84,800 in compensatory damages per Defendant.

21 457. Defendants Northampton County and/or Bethlehem Township, and the
22 Bethlehem Township Police Department, is legally obligated to appropriately train its
23 state actor employees to avoid this egregious violation of the U.S. Constitution, and

1 since harm was actually caused to the current Plaintiff Smith Family, and since harm is
 2 likely to continue to harm future similarly situated families, and because the acts of the
 3 Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's
 4 rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition
 5 of punitive damages on Defendants Northampton County and/or Bethlehem Township,
 6 and Officers Andrew Keyock & Thomas A. Smith, Corporal Kirk Harryn, and Chief
 7 Daniel G. Pancoast to deter such Defendants from committing such conduct in the
 8 future which violates the Fourth Amendment of the United States Constitution Plaintiffs
 9 respectfully request an amount of \$1,000,000 in punitive damages per Defendants
 10 Officers Andrew Keyock and Thomas A. Smith; \$5,000,000 per Defendants Corporal
 11 Kirk Harryn and Chief Daniel G. Pancoast; and \$10,000,000 per Defendant
 12 Northampton County.

13 458. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 14 any actual injury despite the deprivation of his federal rights, the Plaintiff respectfully
 15 requests a nominal judgment of \$1.00.

16 **V. Fourth Amendment**

17 **Right to be Free from Unlawful Seizure**

18 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
 19 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
 20 Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team", & Mr. Jerry Hric,

21 MD

1 459. The Fourth Amendment to the United States Constitution protects people from
2 being subjected to unreasonable seizures by state actors.

3 460. A state actor may only seize a person if there is appropriate justification to do so.

4 461. Upon information and belief, Plaintiffs Mr. and Mrs. Smith and Newborn baby
5 J.A.S. can demonstrate that Defendants St. Luke's Hospital, Onsite Neonatal, OBHG
6 PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr.
7 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership
8 Team", & Mr. Jerry Hric, MD, while under color of law (1) intentionally held Plaintiffs Mr.
9 and Mrs. Smith apart from Newborn baby J.A.S. without consent from his parents and
10 under threat of arrest; (2) the acts of withholding Newborn baby J.A.S. from his parents
11 Plaintiffs Mr. and Mrs. Smith, are, but are not limited to, keeping Newborn baby J.A.S.
12 separated from his parents against their will and through physical force by locking the
13 doors to the NICU, guards blocking Plaintiffs Mr. & Mrs. Smith from entering the NICU,
14 St. Luke's Hospital staff threatening arrest of the Plaintiffs Mr. & Mrs. Smith, and indeed,
15 calling the local police to have Mr. and Mrs. Smith escorted by armed police officers off
16 of Defendant St. Luke's Property; and, (3) the seizures of Plaintiffs Mr. and Mrs. Smith
17 and Newborn baby J.A.S. were unreasonable.

18 462. "[A] Fourth Amendment seizure . . . [occurs] only when there is a governmental
19 termination of freedom of movement *through means intentionally applied*."⁹

⁹*Brower v. County of Inyo*, 489 U.S. 593, 596-97 (1989) (emphasis in original).

1 463. The U.S. Supreme Court has subsequently refined this test and it now asks,
2 “[W]hether a reasonable person would feel free to decline the officers' requests or
3 otherwise terminate the encounter.”¹⁰

4 464. Upon information and belief, Plaintiffs Mr. & Mrs. Smith assert that when they
5 were forcefully withheld from being with their newborn baby against their consent, that
6 the force necessary to prevent their reunion was through means intentionally applied by
7 state actor Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa
8 Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,
9 Ms. Darla Frack, Ms. Dawn Hoffman, the “Hospital Leadership Team”, & Mr. Jerry Hric,
10 MD.

11 465. Upon information and belief, Plaintiffs Mr. and Mrs. Smith were not reasonably
12 able to access Plaintiff Newborn baby J.A.S. while remaining in the hospital, or by
13 taking Newborn baby J.A.S. away from Defendant St. Luke’s Hospital; and, Newborn
14 baby J.A.S. did not have the ability to consent to his own confinement away from his
15 parents.

16 466. Upon information and belief Defendants St. Luke’s Hospital, Onsite Neonatal,
17 OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq.,
18 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the “Hospital Leadership

¹⁰*United States v. Drayton*, 536 U.S. 194, 202 (2002) (quoting *Florida v. Bostick*, 501 U.S. 429, 436 (1991)); *see also Drayton*, 536 U.S. at 202 (noting that “[t]he reasonable person test . . . is objective and ‘presupposes an *innocent* person’” (quoting *Bostick*, 501 U.S. at 438)).

1 Team”, & Mr. Jerry Hric, MD did not presuppose that Plaintiffs Mr. and Mrs. Smith were
2 innocent of harming their child.

3 467. Upon information and belief, Defendants St. Luke’s Hospital, Onsite Neonatal,
4 OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq.,
5 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the “Hospital Leadership
6 Team”, & Mr. Jerry Hric, MD. had no reason to suspect Newborn baby J.A.S. had been
7 or was going to be abused by his parents.

8 468. Upon information and belief, Defendants St. Luke’s Hospital, Onsite Neonatal,
9 OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq.,
10 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the “Hospital Leadership
11 Team”, & Mr. Jerry Hric, MD., acting under color of law, by virtue of custom, pattern,
12 practice, policy, lack of supervision and/or failure to appropriately train and/or discipline,
13 authorizes its state actor agent, employees, and/or assigns to act in an unconstitutional
14 fashion by having neither a court order, nor reasonable suspicion of a crime being
15 committed by any of the Plaintiffs, did seize a newborn baby child, as well as seizing his
16 parents, and such seizure was based solely on a report that the Defendants had
17 unconfirmed and undifferentiated drug test results for both legal amphetamines and
18 illegal methamphetamines, and without any basis to believe that the mother abused or
19 neglected her child, or that mother or child were treated for methamphetamine
20 withdrawal related to Plaintiff Mrs. Smith’s or Newborn baby J.A.S.’s alleged condition.

21 469. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
22 evidence that the Defendant State Actors conspired with at least one Defendant Private
23 Actor elsewhere listed in this complaint.

1 470. The conspiracy between the Defendant parties and their agents, employees, or
2 assigns violates *42 U.S.C. § 1983*.

3 471. Upon information and belief, Plaintiff Smith Family can demonstrate by a
4 preponderance of the evidence that Defendant State Actors, Ms. Teresa Marlino, MD,
5 Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
6 Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team," violated Plaintiff Smith
7 Family's federal rights, and that supervisors St. Luke's Hospital, Onsite Neonatal,
8 OBHG PA, and Mr. Jerry Hric, MD should be held liable for conduct of subordinates
9 Defendant State Actors, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve
10 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
11 "Hospital Leadership Team," because as supervisors directed the actions in question,
12 or had actual knowledge of the violations and acquiesced to them, or with deliberate
13 indifference to the consequences, established and maintained a policy, practice or
14 custom which directly caused the violations under a *Monell* legal theory.

15 472. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
16 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
17 Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team", & Mr. Jerry Hric, MD.,
18 violated Plaintiff's rights under the Fourth Amendment of the United States Constitution.

19 473. Plaintiffs assert this claim pursuant to *42 U.S.C. § 1983*.

20 474. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
21 Defendants' conduct, including but not limited to, emotional and psychological distress,
22 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
23 requests appropriate compensatory damages to account for PTSD therapies and other

1 related treatments as they have been and will continue to be necessary; Plaintiffs
2 respectfully request an amount of \$84,800 in compensatory damages per Defendant.
3 475. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
4 Neonatal, OBHG PA, and Mr. Jerry Hric, MD, and therefore, their ability to afford the
5 appropriate training to avoid this egregious violation of the U.S. Constitution, and since
6 harm was actually caused to the current Plaintiff Smith Family, and since harm is likely
7 to continue to harm future postpartum families, and because the acts of the Defendants
8 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
9 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
10 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, and
11 Mr. Jerry Hric, MD, to deter such Defendants from committing to such conduct in the
12 future which violates the Fourth Amendment of the United States Constitution Plaintiffs
13 respectfully request an amount of \$5,000,000 in punitive damages per Defendants Mr.
14 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the
15 "Hospital Leadership Team", & Mr. Jerry Hric, MD; and \$10,000,000 per Defendants St.
16 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia
17 Shultz, MD.
18 476. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
19 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
20 request a nominal judgment of \$1.00.

21 VI. **Fourth Amendment**

22 *Invasion of Privacy*

1 Mrs. Smith v. St. Luke's Hospital, "Security Guard 'Freddy'", "Security Guard
2 'Joe'", "Security Guard 'Nate'", "Security Supervisor 'Unknown'", "Head of
3 Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,
4 Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

5 477. The Fourth Amendment to the United States Constitution protects people from
6 being subjected to unreasonable invasions of privacy by state actors.

7 478. A state actor may only seize a invade the privacy of a private citizen if there is
8 appropriate justification to do so.

9 479. Upon information and belief, Plaintiff Mrs. Smith can demonstrate that
10 Defendants St. Luke's Hospital, "Security Guard 'Freddy'", "Security Guard 'Joe'",
11 "Security Guard 'Nate'", "Security Supervisor 'Unknown'", "Head of Hospital Security
12 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
13 Dawn Hoffman, and the "Hospital Leadership Team," while under color of law (1)
14 intentionally placed male security guards around the twenty-four hours a day at
15 Newborn baby J.A.S.'s NICU pod without consent from Plaintiff Mrs. Smith and under
16 constant observation by at least three different men; (2) the acts of constant male
17 observation of a postpartum and breastfeeding mother were intentional and were
18 designed with the purpose to gather information about Plaintiff Mrs. Smith that could be
19 observed and reported to Defendant St. Luke's Hospital and its employees, agents,
20 and/or assigns; (3) the likely purpose of gathering information of Plaintiff Mrs. Smith and
21 reporting it to superiors was to further the "prosecutorial eye" that was being vigilantly
22 maintained by the Defendants St. Luke's Hospital, "Security Guard 'Freddy'", "Security

Guard ‘Joe’”, “Security Guard ‘Nate’”, “Security Supervisor ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team,” against the Plaintiff Mrs. Smith; and (4) the invasions of Plaintiff Mrs. Smith’s privacy were unreasonable.

480. Upon information and belief Defendants St. Luke’s Hospital, “Security Guard ‘Freddy’”, “Security Guard ‘Joe’”, “Security Guard ‘Nate’”, “Security Supervisor ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team,” did not presuppose that Plaintiff Mrs. Smith was innocent of harming her child.

481. Upon information and belief, Defendants St. Luke’s Hospital, “Security Guard ‘Freddy’”, “Security Guard ‘Joe’”, “Security Guard ‘Nate’”, “Security Supervisor ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team,” had no reason to suspect that Plaintiff Mrs. Smith had or was going to commit a crime, and therefore had no cause to constantly monitor her.

482. Defendants “Security Guard ‘Freddy’”, “Security Guard ‘Joe’”, and “Security Guard ‘Nate’”, had knowledge that Plaintiff Mrs. Smith was breastfeeding Newborn baby J.A.S., and on numerous occasions, without cause, and without permission of Plaintiff Mrs. Smith, physically invaded the private sanctum of a breastfeeding mother with random insertions of self and voyeuristic observations into Newborn baby J.A.S.’s NICU unit.

1 483. Defendant male guards, in acts of humiliation, even followed Plaintiff Mrs. Smith
2 to and from the restroom, and at no time did a female guard follow Plaintiff Mrs. Smith to
3 the restroom in lieu of a male guard.

4 484. The repeated invasions of Plaintiff Mrs. Smith's privacy could have been
5 lessened by using guards who identified their gender as female instead of male;
6 however, upon information and belief the Defendants agreed to only place male security
7 guards at Newborn baby J.A.S.'s NICU pod.

8 485. Upon information and belief, Defendant St. Luke's Hospital did not at any time
9 provide the mother, Plaintiff Mrs. Smith, with a guard who self-identifies as female or
10 who is chromosomally female.

11 486. Upon information and belief, Defendants St. Luke's Hospital, "Security Guard
12 'Freddy'", "Security Guard 'Joe'", "Security Guard 'Nate'", "Security Supervisor
13 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert
14 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
15 Team,", acting under color of law, by virtue of custom, pattern, practice, policy, lack of
16 supervision and/or failure to appropriately train and/or discipline, authorizes its agents,
17 employees, and/or assigns to act in an unconstitutional fashion by having neither a
18 court order, nor reasonable suspicion of a crime being committed by the Plaintiff Mrs.
19 Smith, did constantly invade the privacy of Plaintiff Mrs. Smith by constantly observing
20 her during intimate moments with her newborn child in neonatal intensive care, and
21 such invasions of privacy are based solely on a report that the hospital had unconfirmed
22 and undifferentiated drug test results for both legal amphetamines and illegal
23 methamphetamines in the same test, and without any basis to believe that the mother

1 abused or neglected her child, or that mother or child were treated for
2 methamphetamine withdrawal related to Plaintiff Mrs. Smith's or Newborn baby J.A.S.'s
3 alleged condition.

4 487. Upon information and belief, all Defendants intended to subject new mothers to
5 unwarranted, highly invasive, burdensome, humiliating, and/or restrictive actions based
6 exclusively on unconfirmed and undifferentiated drug test results for legal
7 amphetamines and illegal methamphetamines, without any basis to suspect or believe
8 that Newborn baby J.A.S. had been affected by illegal substance abuse or was having
9 withdrawal symptoms resulting from prenatal drug exposure.

10 488. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
11 evidence that the Defendant State Actors conspired with at least one Defendant Private
12 Actor elsewhere listed in this complaint.

13 489. The conspiracy between the Defendant parties and their agents, employees, or
14 assigns violates *42 U.S.C. § 1983*.

15 490. Upon information and belief, Plaintiff Smith Family can demonstrate by a
16 preponderance of the evidence that "Security Guard 'Freddy'", "Security Guard 'Joe'",
17 and "Security Guard Nate'" violated Plaintiff Mrs. Smith's federal rights, and that
18 supervisor Defendants St. Luke's Hospital, "Security Supervisor 'Unknown'", "Head of
19 Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
20 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team," should be held
21 liable for conduct of subordinates "Security Guard 'Freddy'", "Security Guard 'Joe'", and
22 "Security Guard Nate'", because as supervisors directed the actions in question, or had
23 actual knowledge of the violation and acquiesced to it, or with deliberate indifference to

1 the consequences, established and maintained a policy, practice or custom which
2 directly caused the violation under a *Monell* legal theory.

3 491. Defendant St. Luke's Hospital, through the actions of its agents, assigns, and/or
4 employees "Security Guard 'Freddy'", "Security Guard 'Joe'", "Security Guard 'Nate'",
5 "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve
6 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
7 "Hospital Leadership Team,", violated Plaintiff's rights under the Fourth Amendment of
8 the United States Constitution.

9 492. Plaintiff asserts this claim pursuant to 42 U.S.C. § 1983.

10 493. Plaintiff Mrs. Smith has suffered substantial harm as a result of Defendants'
11 conduct, including but not limited to, emotional and psychological distress, pain and
12 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
13 appropriate compensatory damages to account for PTSD therapies and other related
14 treatments as they have been and will continue to be necessary; Plaintiff respectfully
15 requests an amount of \$59,500 in compensatory damages per Defendant.

16 494. Given the substantial wealth of the Defendants St. Luke's Hospital, ", "Head of
17 Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
18 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team", and therefore,
19 their ability to afford the appropriate training to avoid this egregious violation of the U.S.
20 Constitution, and, since harm was actually caused to the current Plaintiff Mrs. Smith,
21 and since harm is likely to continue to harm future postpartum families, and because the
22 acts of the Defendants and their agents, assigns, or employees callously disregarded
23 the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests

the imposition of punitive damages on Defendants St. Luke's Hospital, ", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" to deter such Defendants from committing to such conduct in the future which violates the Fourth Amendment of the United States Constitution Plaintiffs respectfully request an amount of \$500,000 in punitive damages per Defendants "Security Guard 'Freddy'", "Security Guard 'Joe'", "Security Guard 'Nate'"; \$1,000,000 per Defendants "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'"; \$5,000,000 per Defendants Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"; and \$10,000,000 for Defendant St. Luke's Hospital.

495. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered any actual injury despite the deprivation of her federal rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

VII. Fourth Amendment

Right to be Free from Unlawful Drug Testing

Mrs. Grace Smith & Newborn baby J.A.S. v. St. Luke's Hospital, Bethlehem

Neonatal, St. Luke's Obstetrics and Gynecology Associates, Ms. Marilyn

Ekonomidis, MD, & Mr. Christopher Gilbert, MD

496. Defendants St. Luke's Hospital, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology Associates, Ms. Marilyn Ekonomidis, MD, and Mr. Christopher Gilbert, MD did not inform Plaintiff Mrs. Smith that Defendants were collecting her and her child's

1 urine for drug testing for use in her potential prosecution, and possibly to separate her
2 from her newborn child, in violation of her Fourth Amendment rights as contained within
3 the United States Constitution.¹¹

4 497. Upon information and belief, Defendants St. Luke's Hospital, Bethlehem
5 Neonatal, and St. Luke's Obstetrics and Gynecology Associates, by virtue of custom,
6 pattern, practice, policy, lack of supervision and/or failure to appropriately train and/or
7 discipline, authorizes its agents, employees, and/or assigns to act in an unconstitutional
8 fashion by requiring women and newborn babies to submit to drug screenings without
9 statutory authorization.

10 498. Defendants St. Luke's Hospital, Bethlehem Neonatal, St. Luke's Obstetrics and
11 Gynecology Associates, Ms. Marilyn Ekonomidis, MD, and Mr. Christopher Gilbert, MD
12 ordered invalid undifferentiated drug tests for both Plaintiffs Mrs. Smith and Newborn
13 baby J.A.S. the results of which could not distinguish between legal amphetamines and
14 illegal methamphetamines.

¹¹"...its staff members are government actors subject to the Fourth Amendment's strictures. *New Jersey v. T.L. O.*, 469 U.S. 325, 335-337. Moreover, the urine tests at issue were indisputably searches within that Amendment's meaning. *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 617. Furthermore, both lower courts viewed the case as one involving MUSC's right to conduct searches without warrants or probable cause, and this Court must assume for purposes of decision that the tests were performed without the patients' informed consent." *Ferguson v. City of Charleston*, 532 U.S. 67, 68 (2001).

1 499. There was no reasonable suspicion to warrant drug testing of Newborn baby
2 J.A.S. given that he did not exhibit any signs or symptoms of in utero exposure to illegal
3 substances, and neither did he suffer from postpartum methamphetamine withdrawal.

4 500. Defendants St. Luke's Hospital, Bethlehem Neonatal, St. Luke's Obstetrics and
5 Gynecology Associates, Ms. Marilyn Ekonomidis, MD, and Mr. Christopher Gilbert, MD
6 did not have any reasonable basis to believe that the patient mother Plaintiff Mrs. Smith
7 abused or neglected her child as Plaintiff Mrs. Smith did not exhibit any signs of
8 methamphetamine abuse nor withdrawal symptoms from such a substance over time.

9 501. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
10 evidence that the Defendant State Actors conspired with at least one Defendant Private
11 Actor elsewhere listed in this complaint.

12 502. The conspiracy between the Defendant parties and their agents, employees, or
13 assigns violates *42 U.S.C. § 1983*.

14 503. Upon information and belief, Plaintiff Mrs. Smith can demonstrate by a
15 preponderance of the evidence that Defendants Ms. Marilyn Ekonomidis, MD, and Mr.
16 Christopher Gilbert, MD violated Mrs. Smith's federal rights, and that supervisor
17 Defendants St. Luke's Hospital, Bethlehem Neonatal, St. Luke's Obstetrics and
18 Gynecology Associates should be held liable for conduct of subordinates Ms. Marilyn
19 Ekonomidis, MD, and Mr. Christopher Gilbert, MD, because as supervisor directed the
20 actions in question, or had actual knowledge of the violations and acquiesced to them,
21 or with deliberate indifference to the consequences, established and maintained a
22 policy, practice or custom which directly caused the violation under a *Monell* legal
23 theory.

1 504. Defendants St. Luke's Hospital, Bethlehem Neonatal, St. Luke's Obstetrics and
2 Gynecology Associates, Ms. Marilyn Ekonomidis, MD, and Mr. Christopher Gilbert, MD,
3 violated Plaintiff's rights under the Fourth Amendment of the United States Constitution.

4 505. Plaintiffs asserts this claim pursuant to *42 U.S.C. § 1983*.

5 506. Plaintiff Mrs. Smith has suffered substantial harm as a result of Defendants'
6 conduct, including but not limited to, emotional and psychological distress, pain and
7 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
8 appropriate compensatory damages to account for PTSD therapies and other related
9 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
10 request an amount of \$59,500 in compensatory damages per Defendant.

11 507. Given the substantial wealth of the Defendants St. Luke's Hospital, Bethlehem
12 Neonatal, St. Luke's Obstetrics and Gynecology Associates, Ms. Marilyn Ekonomidis,
13 MD, and Mr. Christopher Gilbert, MD, and therefore, their ability to afford the
14 appropriate training to avoid this egregious violation of the U.S. Constitution, and since
15 harm was actually caused to the current Plaintiffs Mrs. Smith and Newborn baby J.A.S.,
16 and since harm is likely to continue to harm future full-term pregnant mothers,
17 postpartum mothers, and newborn babies, and because the acts of the Defendants and
18 their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
19 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
20 punitive damages on Defendants St. Luke's Hospital, Bethlehem Neonatal, St. Luke's
21 Obstetrics and Gynecology Associates, Ms. Marilyn Ekonomidis, MD, and Mr.
22 Christopher Gilbert, MD, to deter such Defendants from committing to such conduct in
23 the future which violates the Fourth Amendment of the United States Constitution

1 Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per
 2 Defendants Ms. Marilyn Ekonomidis, MD, & Mr. Christopher Gilbert, MD; \$5,000,000
 3 per Defendants Bethlehem Neonatal and St. Luke's Obstetrics and Gynecology
 4 Associates; and \$10,000,000 per Defendant St. Luke's Hospital.

5 508. In the unlikely event that the jury does not find that Plaintiffs Mrs. Smith and
 6 Newborn baby J.A.S. suffered any actual injury despite the deprivation of their federal
 7 rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

8 **VIII. Fourth Amendment**

9 **Right to be Free from Unlawful Drug Testing**

10 **Mrs. Grace Smith v. Monroe County, Ms. Adelaide Grace & Mr. Tim Shaw**

11 509. Defendant Monroe County through its Office of Children and Youth Services
 12 required Plaintiff Mrs. Smith to submit to a urine drug test in violation of her Fourth
 13 Amendment rights as contained within the United States Constitution.¹²

¹²"...its staff members are government actors subject to the Fourth Amendment's strictures. *New Jersey v. T.L. O.*, 469 U.S. 325, 335-337. Moreover, the urine tests at issue were indisputably searches within that Amendment's meaning. *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 617. Furthermore, both lower courts viewed the case as one involving MUSC's right to conduct searches without warrants or probable cause, and this Court must assume for purposes of decision that the tests were

1 510. Upon information and belief, Monroe County Child and Youth Services, by virtue
2 of custom, pattern, practice, policy, lack of supervision and/or failure to appropriately
3 train and/or discipline, authorizes its caseworkers to act in an unconstitutional fashion
4 by requiring women to submit to repetitive urine drug screenings without statutory
5 authorization, and based solely on unconfirmed and undifferentiated drug test results
6 between legal amphetamines and illegal methamphetamines, without any basis to
7 believe that the patient mother abused or neglected her child.

8 511. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
9 evidence that the Defendant State Actors conspired with at least one Defendant Private
10 Actor elsewhere listed in this complaint.

11 512. The conspiracy between the Defendant parties and their agents, employees, or
12 assigns violates *42 U.S.C. § 1983*.

13 513. Upon information and belief, Plaintiff Mrs. Smith can demonstrate by a
14 preponderance of the evidence that Mr. Tim Shaw violated Mrs. Smith's federal rights,
15 and that supervisor Defendant Ms. Adelaide Grace should be held liable for conduct of
16 subordinate Mr. Tim Shaw, because as supervisor directed the actions in question, or
17 had actual knowledge of the violation and acquiesced to it, or with deliberate
18 indifference to the consequences, established and maintained a policy, practice or
19 custom which directly caused the violation under a *Monell* legal theory.

performed without the patients' informed consent." *Ferguson v. City of Charleston*, 532
U.S. 67, 68 (2001).

1 514. Defendants Monroe County, Ms. Adelaide Grace, and Mr. Tim Shaw through the
2 Office of Children and Youth Services, violated Plaintiff's rights under the Fourth
3 Amendment of the United States Constitution.

4 515. Plaintiff asserts this claim pursuant to *42 U.S.C. § 1983*.

5 516. Plaintiff has suffered substantial harm as a result of Defendants' conduct,
6 including but not limited to, emotional and psychological distress, pain and suffering,
7 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
8 compensatory damages to account for PTSD therapies and other related treatments as
9 they have been and will continue to be necessary; Plaintiff respectfully requests an
10 amount of \$59,500 in compensatory damages per Defendant.

11 517. Defendants Monroe County through its Office of Children and Youth Services, is
12 legally obligated to appropriately train its state actor employees to avoid this egregious
13 violation of the U.S. Constitution, and since harm was actually caused to the current
14 Plaintiff Mrs. Smith, and since harm is likely to continue to harm future postpartum
15 mothers, and because the acts of the Defendants and their agents, assigns, or
16 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
17 the Plaintiffs respectfully request the imposition of punitive damages on Defendants
18 Monroe County and Adelaide W. Grace to deter such Defendants from committing such
19 conduct in the future which violates the First Amendment of the United States
20 Constitution Plaintiff respectfully requests an amount of \$1,000,000 in punitive damages
21 for Defendant Mr. Tim Shaw; \$5,000,000 for Defendant Ms. Adelaide Grace, and
22 \$10,000,000 for Defendant Monroe County.

518. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered any actual injury despite the deprivation of her federal rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

IX. Fourth Amendment

Right to be Free from Unlawful Drug Testing

Newborn baby J.A.S. v. Monroe County, Ms. Adelaide Grace & Mr. Tim Shaw

519. Monroe County CYS via the actions of St. Luke's Hospital, required Newborn baby J.A.S. to submit to a urine, tissue sample, and/or blood test to test for illegal drugs, in violation of his Fourth Amendment rights as contained within the United States Constitution.¹³

¹³“...its staff members are government actors subject to the Fourth Amendment's strictures. *New Jersey v. T.L. O.*, 469 U.S. 325, 335-337. Moreover, the urine tests at issue were indisputably searches within that Amendment's meaning. *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 617. Furthermore, both lower courts viewed the case as one involving MUSC's right to conduct searches without warrants or probable cause, and this Court must assume for purposes of decision that the tests were performed without the patients' informed consent.” *Ferguson v. City of Charleston*, 532 U.S. 67, 68 (2001).

1 520. Plaintiff newborn baby J.A.S. could not consent to testing that would be held
2 against his mother and father and used to prosecute and separate the Plaintiffs Mr. and
3 Mrs. Smith from Newborn baby J.A.S.

4 521. Neither Plaintiffs, Mr. nor Mrs. Smith, consented to Newborn baby J.A.S. being
5 tested for illegal drugs via urine, blood, tissue samples, or any other biological matter
6 originating from Newborn baby J.A.S.

7 522. Upon information and belief, Monroe County Child and Youth Services, Ms.
8 Adelaide Grace, and Mr. Tim Shaw by virtue of custom, pattern, practice, policy, and/or
9 failure to appropriately train and/or discipline, authorizes beyond the scope of its legally
10 authorized statutory duties, for hospitals, including St. Luke's Hospital, to collect
11 information about newly born children for the purposes of potential prosecution of the
12 parents, as well as, to separate newborn children from their parents.

13 523. There was no reasonable suspicion to warrant drug testing of Newborn baby
14 J.A.S. given that he did not exhibit any signs or symptoms of in utero exposure to illegal
15 substances, and neither did he suffer from methamphetamine withdrawal.

16 524. Even if an illegal drug test is permissible by law, then the results must be valid if
17 they are to be communicated to Monroe County Child and Youth Services, and since St.
18 Luke's Hospital drug test did not differentiate between legal prescription amphetamines
19 and illegal methamphetamines, the purpose of St. Luke's Hospital's communication that
20 Plaintiff Mrs. Smith's results by St. Luke's Hospital to Defendant Monroe County Child
21 and Youth Services is to color the parents as abusers of children in an attempt to use
22 their own child's medical records against them.

1 525. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that the Defendant State Actors conspired with at least one Defendant Private
3 Actor elsewhere listed in this complaint.

4 526. The conspiracy between the Defendant parties and their agents, employees, or
5 assigns violates 42 U.S.C. § 1983.

6 527. Upon information and belief, Plaintiff newborn baby J.A.S. can demonstrate by a
7 preponderance of the evidence that Mr. Tim Shaw violated Mrs. Smith's federal rights,
8 and that supervisor Defendant Ms. Adelaide Grace should be held liable for conduct of
9 subordinate Mr. Tim Shaw, because as supervisor directed the actions in question, or
10 had actual knowledge of the violation and acquiesced to it, or with deliberate
11 indifference to the consequences, established and maintained a policy, practice or
12 custom which directly caused the violation under a *Monell* legal theory.

13 528. Defendants Monroe County, Ms. Adelaide Grace, and Mr. Tim Shaw through the
14 actions of the Office of Children & Youth, violated Plaintiff's rights under the Fourth
15 Amendment to the United States Constitution.

16 529. Plaintiff asserts this claim pursuant to 42 U.S.C. §1983.

17 530. Defendant Monroe County through its Office of Children and Youth Services, is
18 legally obligated to appropriately train its state actor employees to avoid this egregious
19 violation of the U.S. Constitution, and since harm was actually caused to the current
20 Plaintiff Newborn baby J.A.S., and since harm is likely to continue to harm future
21 newborn children, and because the acts of the Defendants and their agents, assigns, or
22 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
23 the Plaintiff respectfully requests the imposition of punitive damages on Defendants

Monroe County and Adelaide W. Grace to deter such Defendants from committing such conduct in the future which violates the Fourth Amendment of the United States Constitution Plaintiff respectfully requests an amount of \$1,000,000 in punitive damages for Defendant Mr. Tim Shaw; \$5,000,000 for Defendant Ms. Adelaide Grace, and \$10,000,000 for Defendant Monroe County.

531. In the unlikely event that the jury does not find that Plaintiff Newborn baby J.A.S. suffered any actual injury despite the deprivation of his federal rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

X. Fourteenth Amendment

Procedural Due Process

Violation of Right to Consent to the Timing of Tests Being

Conducted on One's Child

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa

Marlino, MD, Ms. Cynthia Shultz, MD, Ms. Dianne Jacobetz, MD, Mr. Patrick

Philpot, DO, Mr. Shadi Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A.

Nardis, CRNP, Ms. Kimberly A. Butz, RN, & Mr. Jerry Hric, MD, Monroe County,

Mr. Tim Shaw & Ms. Adelaide W. Grace

532. When a state actor, acting under color of law, without a court order, allows a private entity to separate a parent from their newborn child without probable cause then

1 a special relationship of protective custody between the private entity, the state, and the
2 child arises.

3 533. The protective custody between the private entity, the state, and the child, as
4 directed by, or assented to by a state actor, gives rise to duties under the Fourteenth
5 Amendment to the United States Constitution.

6 534. Pa. Code § 28 outlines appropriate care for newborns by a private entity or state
7 agency.

8 535. 28 Pa. Code §§ 28.22 & 28.26 directs the timing of initial and follow up specimen
9 collections by birth centers and hospitals:

10 (a) Pa. Code §§ 28.22 & 28.26 states, “A birth center or hospital shall collect the initial
11 specimen from each newborn child regardless of feeding history or medical
12 condition, as close to 48 hours of age as possible but not later than 72 hours of age
13 unless the newborn child falls into one of the following categories:

14 (b) (3) *Early discharge*. If the newborn child is discharged from the birth center or
15 hospital before 24 hours of age, the birth center or hospital shall collect the initial
16 specimen from the newborn child as close to the time of discharge as is practicable,
17 regardless of feeding history or medical condition. The birth center or hospital shall
18 give the parent or guardian in whose care and custody the newborn child is
19 discharged written notification of the need for a repeat specimen and shall also
20 provide instructions to the parent or guardian for obtaining a repeat specimen from
21 the newborn child as described in § 28.26 (relating to timing of repeat specimen
22 collection); and,

1 (a) § 28.26. *Timing of [R]epeat [S]pecimen [C]ollection.* When the newborn child has
2 been discharged from a birth center or hospital before 24 hours of age, the birth
3 center or hospital shall collect or cause to be collected a repeat specimen from the
4 newborn child, regardless of feeding history or medical condition, as close to 48
5 hours of age as possible but not later than 72 hours of age.”

6 536. Considering there were not any complications with neither Mrs. Smith nor
7 Newborn baby J.A.S., Plaintiffs Mr. and Mrs. Smith requested that Newborn baby J.A.S.
8 and Mrs. Smith be discharged by Defendant St. Luke’s Hospital within 24-hours of
9 Newborn baby J.A.S.’s birth.

10 537. When Plaintiffs Mr. and Mrs. Smith requested that Newborn baby J.A.S. be
11 discharged within a day, they specifically requested that Newborn baby J.A.S. have all
12 necessary testing completed as soon as practically possible.

13 538. Despite no complications with Newborn baby J.A.S., Plaintiffs Mr. and Mrs. Smith
14 were denied the right to take Newborn baby J.A.S. home from St. Luke’s Hospital within
15 24-hours as requested.

16 539. Defendants St. Luke’s, Onsite Neonatal, OBHG PA PA, Ms. Teresa Marlino, MD,
17 Ms. Cynthia Shultz, MD, Ms. Dianne Jacobetz, MD, Mr. Patrick Philpot, DO, Mr. Shadi
18 Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, Ms. Kimberly
19 A. Butz, RN, & Mr. Jerry Hric, MD, et al., collected specimens from Newborn baby
20 J.A.S. over the course of days and at their leisure, and without consent of the parents,
21 Plaintiffs Mr. and Mrs. Smith.

22 540. Upon information and belief, due to the fact that neither a person, nor an entity,
23 nor a state actor, obtained a court order to place Newborn baby J.A.S. in protective

1 custody, and because Plaintiffs Mr. and Mrs. Smith were denied the right to choose,
2 consent, and schedule appropriate medical care for Newborn baby J.A.S., Defendants
3 St. Luke's Hospital, Onsite Neonatal, OBHG PA, and Monroe County CYS, among other
4 Defendants violated *28 Pa. Code § 28.22*.

5 541. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
6 OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Ms. Dianne Jacobetz,
7 MD, Mr. Patrick Philpot, DO, Mr. Shadi Malaeb, MD, Ms. Patricia Bates, CRNP, Ms.
8 Kimberly A. Nardis, CRNP, Ms. Kimberly A. Butz, RN, & Mr. Jerry Hric, MD, Monroe
9 County, Mr. Tim Shaw & Ms. Adelaide W. Grace, by virtue of custom, pattern, practice,
10 policy, lack of supervision and/or failure of training and/or discipline, acted in an
11 unconstitutional fashion by Plaintiff parents Mr. and Mrs. Smith to choose, consent, or
12 schedule medical care for Newborn baby J.A.S., both prior to and after Newborn baby
13 J.A.S. was taken into manufactured protective custody under a *Monell* legal theory.

14 542. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
15 evidence that each individual Defendant State Actor conspired with at least one
16 Defendant Private Actor elsewhere listed in this complaint.

17 543. The conspiracy between the Defendant parties and their agents, employees, or
18 assigns violates *42 U.S.C. § 1983*.

19 544. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
20 MD, Ms. Cynthia Shultz, MD, Ms. Dianne Jacobetz, MD, Mr. Patrick Philpot, DO, Mr.
21 Shadi Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, Ms.
22 Kimberly A. Butz, RN, & Mr. Jerry Hric, MD, Monroe County, Mr. Tim Shaw & Ms.
23 Adelaide W. Grace, under color of law, by not allowing Plaintiff parents Mr. and Mrs.

1 Smith to choose, consent, or schedule Newborn baby J.A.S.'s medical testing both
2 before and after when a state created "protective custody" was created between state
3 actor private Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, the state, and
4 Newborn baby J.A.S. violated Plaintiff Smith Family's rights under the Equal Protection
5 Clause of the Fourteenth Amendment to the United States Constitution.

6 545. Plaintiffs assert this claim is a breach of the Equal Protection Clause pursuant to
7 *42 U.S.C. § 1983*.

8 546. Plaintiffs have suffered substantial harm as a result of Defendants' conduct,
9 including but not limited to, emotional and psychological pain and suffering and injury to
10 their reputations.

11 547. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
12 Defendants' conduct, including but not limited to, emotional and psychological distress,
13 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
14 requests appropriate compensatory damages to account for PTSD therapies and other
15 related treatments as they have been and will continue to be necessary; Plaintiffs
16 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

17 548. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
18 Neonatal, and/or OBHG PA, through its employees, agents, or assigns, and therefore,
19 their ability to afford the appropriate training to avoid this egregious violation of the U.S.
20 Constitution, and Defendants Monroe County through its employees, agents, or
21 assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace's egregious violations of legal
22 obligations to accurately enforce the law, and, since harm was actually caused to the
23 current Plaintiff Smith Family, and since harm is likely to continue to harm future

1 postpartum families, and because the acts of the Defendants and their agents, assigns,
2 or employees callously disregarded the Plaintiff's rights in a reckless and wanton
3 manner, the Plaintiffs respectfully request the imposition of punitive damages on
4 Defendants St. Luke's Hospital, Onsite Neonatal, and/or OBHG PA PA, Monroe County
5 through its employees, agents, or assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace
6 to deter such Defendants from committing to such conduct in the future which violates
7 the Fourteenth Amendment of the United States Constitution Plaintiffs respectfully
8 request an amount of \$1,000,000 in punitive damages per Defendants Ms. Dianne
9 Jacobetz, MD, Mr. Shadi Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
10 Nardis, CRNP, Ms. Kimberly A. Butz, RN, Mr. Jerry Hric, MD, and Mr. Tim Shaw;
11 \$5,000,000 per Defedants Mr. Patrick Philpot, DO and Ms. Adelaide W. Grace; and
12 \$10,000,000 per Defendants Monroe County, St. Luke's Hospital, Onsite Neonatal,
13 OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

14 549. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
15 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
16 request a nominal judgment of \$1.00.

18 **XI. Fourteenth Amendment**

19 *Procedural Due Process*

20 *Violation of Right to have a Newborn Separated from its Parents*

21 *via Court Order*

1 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
 2 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
 3 Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", "Security Guard
 4 'Freddy', "Security Guard 'Joe'", "Security Guard 'Nate'", "Security Guards
 5 'Unknown'", "Security Supervisor 'Unknown'", "Head of Hospital Security
 6 'Unknown'", Mr. Jerry Hric, MD, Monroe County, Northampton County, Mr. Tim
 7 Shaw & Ms. Adelaide W. Grace

8 550. When a state actor, acting under color of law, without a court order, allows a
 9 private entity to separate a parent from their newborn child without probable cause then
 10 a special relationship of protective custody between the private entity, the state, and the
 11 child arises.

12 551. The protective custody between the private entity, the state, and the child, as
 13 directed by, or assented to by a state actor, gives rise to duties under the Fourteenth
 14 Amendment to the United States Constitution.

15 552. If Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA PA, Ms. Teresa
 16 Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,
 17 Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", "Security Guard
 18 'Freddy', "Security Guard 'Joe'", "Security Guard 'Nate'", "Security Guards 'Unknown'",
 19 "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", and Mr. Jerry
 20 Hric, MD maintained custody of Newborn baby J.A.S after the Defendants had been
 21 instructed to relinquish custody of Newborn baby J.A.S. to Plaintiffs Mr. & Ms. Smith

1 then the state actor role that these Defendants took on was that of children and youth
2 services.

3 553. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
4 OBHG PA PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe,
5 Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital
6 Leadership Team", "Security Guard 'Freddy'", "Security Guard 'Joe'", "Security Guard
7 'Nate'", "Security Guards 'Unknown'", "Security Supervisor 'Unknown'", "Head of
8 Hospital Security 'Unknown'", and Mr. Jerry Hric, MD while acting in the state's role of
9 children and youth services did not follow the legally required and appropriate
10 procedures to have a newborn child removed into protective custody from its parents.

11 554. Pa. Code § 6315 allows for children to be taken into protective custody by a
12 private entity or state agency.

13 555. Pa. Code § 6315 (a)(4) instructs the Office of Children and Youth Services to
14 take a child into protective custody from abuse after the receipt of a court order.

15 556. Pa. Code § 6315 (a)(4) instructs that an Office of Children and Youth Services
16 agency worker may not take a child into custody without judicial authorization.

17 557. Upon information and belief, Monroe County through its employees, agents, or
18 assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace, via its Office of Children and
19 Youth Services or a Private Actor who was an assign, agent, or employee of
20 Defendants St. Luke's, Onsite Neonatal, and/or OBHG PA, ordered St. Luke's Hospital,
21 Onsite Neonatal, and/or OBHG PA to take protective custody of newborn baby J.A.S.,
22 either through active communication to do so, or through awareness of Plaintiff Smith
23 Family's situation and passively assenting to the conduct of taking newborn baby J.A.S.

1 into protective custody under the care and responsibility of Defendants St. Luke's
2 Hospital, Onsite Neonatal, and OBHG PA.

3 558. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
4 and/or OBHG PA, through its employees, agents, or assigns, Ms. Teresa Marlino, MD,
5 Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
6 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", "Security Guard 'Freddy'",
7 "Security Guard 'Joe'", "Security Guard 'Nate'", "Security Guards 'Unknown'", "Security
8 Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Jerry Hric, MD, and,
9 Monroe County through its employees, agents, or assigns Mr. Tim Shaw, and Ms. A. W.
10 Grace, via its Office of Children and Youth Services violated Pa. Code § 6315 (a)(4) by
11 taking, or assenting to the taking of Newborn baby J.A.S. into protective custody without
12 a court order, and without legal necessity to separate Plaintiff Newborn baby J.A.S. from
13 his Plaintiff parents Mr. and Mrs. Smith.

14 559. Under a *Monell* legal theory, upon information and belief, Defendants St. Luke's
15 Hospital, Onsite Neonatal, and/or OBHG PA, through its employees, agents, or assigns,
16 Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert
17 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team",
18 "Security Guard 'Freddy'", "Security Guard 'Joe'", "Security Guard 'Nate'", "Security
19 Guards 'Unknown'", "Security Supervisor 'Unknown'", "Head of Hospital Security
20 'Unknown'", Mr. Jerry Hric, MD, and, Monroe County through its employees, agents, or
21 assigns, Mr. Tim Shaw, and Ms. A. W. Grace, by virtue of custom, pattern, practice,
22 policy, lack of supervision and/or failure of training and/or discipline, acted in an
23 unconstitutional fashion by separating parents from their newborn child without a court

1 order, based solely on a report that the hospital had unconfirmed an undifferentiated
2 drug test results for legal amphetamines and illegal methamphetamines, and without
3 any basis to believe that the mother abused or neglected her child.

4 560. Upon information and belief, Plaintiffs Mr. and Mrs. Smith allege that each
5 Defendant violated their duty to not have a newborn baby separated from its parents
6 without a court order when Defendant Private and State Actors concerted St. Luke's
7 Hospital's actions to separate Plaintiffs Mr. and Mrs. Smith from newborn baby J.A.S.
8 under threat of arrest.

9 561. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
10 evidence that each individual Defendant State Actor conspired with at least one
11 Defendant Private Actor elsewhere listed in this claim.

12 562. The conspiracy between the Defendant parties and their agents, employees, or
13 assigns violates *42 U.S.C. § 1983*.

14 563. Upon information and belief, Plaintiffs Mr. and Mrs. Smith allege that each
15 Private Defendant violated their duty to allow parents and newborn children to be
16 together unless a court order directs otherwise or exigent circumstances specifically
17 outlined by law are present between the hospital and its providers, and Plaintiff
18 Newborn baby J.A.S. when they concerted St. Luke's Hospital's actions to separate
19 Plaintiffs Mr. and Mrs. Smith from Plaintiff Newborn baby J.A.S. under threat of arrest.

20 564. Defendants St. Luke's Hospital, Onsite Neonatal, and/or OBHG PA, through its
21 employees, agents, or assigns, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
22 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
23 "Hospital Leadership Team", "Security Guard 'Freddy'", "Security Guard 'Joe'", "Security

Guard 'Nate'", "Security Guards 'Unknown'", "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Jerry Hric, MD, and, Monroe County through its employees, agents, or assigns, Mr. Tim Shaw, and Ms. A. W. Grace, under color of law, by creating or allowing a state created "protective custody" to be created between private Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, and Plaintiff Newborn baby J.A.S. violated Plaintiff Smith Family's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

565. Plaintiffs assert this claim is a breach of the Equal Protection Clause pursuant to 42 U.S.C. § 1983.

566. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of Defendants' conduct, including but not limited to, emotional and psychological distress, pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate compensatory damages to account for PTSD therapies and other related treatments as they have been and will continue to be necessary; Plaintiffs respectfully request an amount of \$84,800 in compensatory damages per Defendant.

567. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite Neonatal, and/or OBHG PA, through its employees, agents, or assigns, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", "Head of Hospital Security 'Unknown'", Mr. Jerry Hric, MD, and therefore, their ability to afford the appropriate training to avoid this egregious violation of the U.S. Constitution, and Defendants Monroe County through its employees, agents, or assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace's egregious violations of leal obligations to accurately

1 enforce the law, and, since harm was actually caused to the current Plaintiff Smith
2 Family, and since harm is likely to continue to harm future postpartum families, and
3 because the acts of the Defendants and their agents, assigns, or employees callously
4 disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs
5 respectfully request the imposition of punitive damages on Defendants St. Luke's
6 Hospital, Onsite Neonatal, and/or OBHG PA, through its employees, agents, or assigns,
7 Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert
8 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", "Head
9 of Hospital Security 'Unknown'", Mr. Jerry Hric, MD, Monroe County through its
10 employees, agents, or assigns, Mr. Tim Shaw, and Ms. Adelaide W. Grace to deter
11 such Defendants from committing to such conduct in the future which violates the
12 Fourteenth Amendment of the United States Constitution; Plaintiffs respectfully request
13 an amount of \$500,000 in punitive damages per Defendants "Security Guard 'Freddy'",
14 "Security Guard 'Joe'", "Security Guard 'Nate'", and "Security Guards 'Unknown'";
15 \$1,000,000 per Defendants "Security Supervisor 'Unknown'", "Head of Hospital Security
16 'Unknown'", Mr. Tim Shaw, and Mr. Jerry Hric, MD; \$5,000,000 per Defendants Mr.
17 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, Ms.
18 Adelaide W. Grace, and "Hospital Leadership Team"; and \$10,000,000 per Defendants
19 St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia
20 Shultz, MD, Monroe County, and Northampton County.

21 568. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
22 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
23 request a nominal judgment of \$1.00.

1 **XII. Fourteenth Amendment**

2 **Procedural Due Process**

3 **Violation of Right to have a Newborn Separated from its Parents**

4 **for Twenty-Four Hours or Less Without a Court Order**

5 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,

6 MD, Ms. Cynthia Shultz, MD, Ms. Dianne Jacobetz, MD, Mr. Patrick Philpot, DO,

7 Mr. Shadi Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP,

8 Ms. Kimberly A. Butz, RN, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.

9 Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", "Security Guard

10 'Freddy', "Security Guard 'Joe'", "Security Guard 'Nate'", "Security Guards

11 'Unknown'", "Security Supervisor 'Unknown'", "Head of Hospital Security

12 'Unknown'", Mr. Jerry Hric, MD, Monroe County, Northampton County, Mr. Tim

13 Shaw & Ms. Adelaide W. Grace

14 569. When a state actor, acting under color of law, without a court order, allows a
15 private entity to separate a parent from their newborn child without probable cause then
16 a special relationship of protective custody between the private entity, the state, and the
17 child arises.

18 570. The protective custody between the private entity, the state, and the child, as
19 directed by, or assented to by a state actor, gives rise to duties under the Fourteenth
20 Amendment to the United States Constitution.

1 571. Pa. Code § 6315 allows for children to be taken into protective custody by a
2 private entity or state agency.

3 572. Pa. Code § 6315 (b) states that the duration to take a child into protective
4 custody for 24-hours begins when protective custody begins.

5 573. Pa. Code § 6315 (b) states that “[e]ach court shall insure that a judge is available
6 24 hours a day, 365 days a year to accept and decide the actions brought by a county
7 agency under this subsection within the 24-hour period.”

8 574. Upon information and belief, on or around 7pm on April 9th, 2021, Plaintiff
9 Newborn baby J.A.S. was taken into protective custody by Defendant St. Luke’s
10 Hospital along with other Defendants and he was not returned to both of his parents
11 within a 24-hour period.

12 575. Upon information and belief, neither St. Luke’s Hospital, nor Monroe County
13 Children and Youth Services, nor any other named Defendant in this claim obtained a
14 court order to place Plaintiff Newborn baby J.A.S. in protective custody.

15 576. Defendants St. Luke’s Hospital, Onsite Neonatal, and Monroe County CYS,
16 among other Defendants named in this claim, had an affirmative duty to attempt to
17 contact a judge when Plaintiff newborn baby J.A.S. was taken into protective custody.

18 577. Upon information and belief, due to the fact that neither a person, nor an entity,
19 nor a state actor, obtained a court order to place Newborn baby J.A.S. in protective
20 custody, Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA PA, and Monroe
21 County CYS, among other Defendants violated Pa. Code § 6315 (b).

22 578. Upon information and belief, Defendants St. Luke’s Hospital, Onsite Neonatal,
23 OBHG PA, through its employees, agents, or assigns, Ms. Teresa Marlino, MD, Ms.

1 Cynthia Shultz, MD, Ms. Dianne Jacobetz, MD, Mr. Patrick Philpot, DO, Mr. Shadi
 2 Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, Ms. Kimberly
 3 A. Butz, RN, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
 4 Dawn Hoffman, "Hospital Leadership Team", "Security Guard 'Freddy'", "Security Guard
 5 'Joe'", "Security Guard 'Nate'", "Security Guards 'Unknown'", "Security Supervisor
 6 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Jerry Hric, MD and, Monroe and
 7 Northampton Counties through its employees, agents, or assigns, Mr. Tim Shaw, and
 8 Ms. Adelaide. W. Grace, via its Office of Children and Youth Services violated Pa. Code
 9 § 6315 (a)(4) by taking, or assenting to the taking of newborn baby J.A.S. into protective
 10 custody without a court order, and without legal necessity to separate Plaintiff Newborn
 11 baby J.A.S. from his Plaintiff parents Mr. and Mrs. Smith.

12 579. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
 13 OBHG PA PA, through its employees, agents, or assigns, Ms. Teresa Marlino, MD, Ms.
 14 Cynthia Shultz, MD, Ms. Dianne Jacobetz, MD, Mr. Patrick Philpot, DO, Mr. Shadi
 15 Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, Ms. Kimberly
 16 A. Butz, RN, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
 17 Dawn Hoffman, "Hospital Leadership Team", "Security Guard 'Freddy'", "Security Guard
 18 'Joe'", "Security Guard 'Nate'", "Security Guards 'Unknown'", "Security Supervisor
 19 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Jerry Hric, and, Monroe and
 20 Northampton Counties through its employees, agents, or assigns, Mr. Tim Shaw, and
 21 Ms. Adelaide. W. Grace, via its Office of Children and Youth Services, by virtue of
 22 custom, pattern, practice, policy, lack of supervision and/or failure of training and/or
 23 discipline, acted in an unconstitutional fashion by separating parents from their newborn

1 child without a court order, based solely on a report that the hospital had unconfirmed
2 and undifferentiated drug test results for legal amphetamines and illegal
3 methamphetamines, and without any basis to believe that the mother abused or
4 neglected her child by not returning full custody of the newborn baby child to its parents
5 within a 24-hour period as prescribed by law.

6 580. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
7 evidence that each individual Defendant State Actor conspired with at least one
8 Defendant Private Actor elsewhere listed in this complaint.

9 581. The conspiracy between the Defendant parties and their agents, employees, or
10 assigns violates *42 U.S.C. § 1983*.

11 582. Defendants Mr. Tim Shaw & Ms. Adelaide W. Grace, under color of law, acting
12 through the Office of Children and Youth Services, by creating or allowing a state
13 created “protective custody” to be created between private Defendant St. Luke’s
14 Hospital, Onsite Neonatal, OBHG PA, and Plaintiff Newborn baby J.A.S. violated
15 Plaintiff Smith Family’s rights under the Equal Protection Clause of the Fourteenth
16 Amendment to the United States Constitution by not returning full custody of the
17 newborn baby child to its parents within a 24-hour period as prescribed by law.

18 583. Under a *Moneill* legal theory, upon information and belief, Plaintiffs can
19 demonstrate by a preponderance of the evidence that Ms. Teresa Marlino, MD, Ms.
20 Cynthia Shultz, MD, Ms. Dianne Jacobetz, MD, Mr. Patrick Philpot, DO, Mr. Shadi
21 Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, Ms. Kimberly
22 A. Butz, RN, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
23 Dawn Hoffman, “Hospital Leadership Team”, “Security Guard ‘Freddy’”, “Security Guard

1 'Joe', "Security Guard 'Nate'", "Security Guards 'Unknown'", "Security Supervisor
 2 'Unknown'", "Head of Hospital Security 'Unknown'" violated the Smith Family's federal
 3 rights, and that supervisor Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA,
 4 "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", and Mr. Jerry
 5 Hric, MD, should be held liable for conduct of subordinates Ms. Teresa Marlino, MD,
 6 Ms. Cynthia Shultz, MD, Ms. Dianne Jacobetz, MD, Mr. Patrick Philpot, DO, Mr. Shadi
 7 Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, Ms. Kimberly
 8 A. Butz, RN, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
 9 Dawn Hoffman, "Hospital Leadership Team", "Security Guard 'Freddy'", "Security Guard
 10 'Joe'", "Security Guard 'Nate'", "Security Guards 'Unknown'", "Security Supervisor
 11 'Unknown'", "Head of Hospital Security 'Unknown'", because as supervisors directed the
 12 actions in question, or had actual knowledge of the violation and acquiesced to it, or
 13 with deliberate indifference to the consequences, established and maintained a policy,
 14 practice or custom which directly caused the violation.

15 584. Under a *Moneill* legal theory, upon information and belief, Plaintiffs can
 16 demonstrate by a preponderance of the evidence that Mr. Tim Shaw violated the Smith
 17 Family's federal rights, and that supervisor Defendant Ms. Adelaide Grace should be
 18 held liable for conduct of subordinate Mr. Tim Shaw, because as supervisor directed the
 19 actions in question, or had actual knowledge of the violation and acquiesced to it, or
 20 with deliberate indifference to the consequences, established and maintained a policy,
 21 practice or custom which directly caused the violation.

22 585. Plaintiffs assert this claim is a breach of the Equal Protection Clause pursuant to
 23 42 U.S.C. § 1983.

1 586. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
2 Defendants' conduct, including but not limited to, emotional and psychological distress,
3 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
4 requests appropriate compensatory damages to account for PTSD therapies and other
5 related treatments as they have been and will continue to be necessary; Plaintiffs
6 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

7 587. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
8 Neonatal, and/or OBHG PA, through its employees, agents, or assigns, Ms. Teresa
9 Marlino, MD, Ms. Cynthia Shultz, MD, Ms. Dianne Jacobetz, MD, Mr. Patrick Philpot,
10 DO, Mr. Shadi Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP,
11 Ms. Kimberly A. Butz, RN, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
12 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", "Security Guard 'Freddy'",
13 "Security Guard 'Joe'", "Security Guard 'Nate'", "Security Guards 'Unknown'", "Security
14 Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Jerry Hric, MD, and
15 therefore, their ability to afford the appropriate training to avoid this egregious violation
16 of the U.S. Constitution, and Defendants Monroe County through its employees, agents,
17 or assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace's egregious violations of legal
18 obligations to accurately enforce the law, and, since harm was actually caused to the
19 current Plaintiff Smith Family, and since harm is likely to continue to harm future
20 postpartum families, and because the acts of the Defendants and their agents, assigns,
21 or employees callously disregarded the Plaintiff's rights in a reckless and wanton
22 manner, the Plaintiffs respectfully request the imposition of punitive damages on
23 Defendants St. Luke's Hospital, Onsite Neonatal, and/or OBHG PA, through its

employees, agents, or assigns, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, “Hospital Leadership Team”, “Head of Hospital Security ‘Unknown’”, Mr. Jerry Hric, MD, Monroe County through its employees, agents, or assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace to deter such Defendants from committing to such conduct in the future which violates the Fourteenth Amendment of the United States Constitution; Plaintiffs respectfully request an amount of \$500,000 in punitive damages per Defendants “Security Guard ‘Freddy’”, “Security Guard ‘Joe’”, “Security Guard ‘Nate’”, and “Security Guards ‘Unknown’”; \$1,000,000 per Defendants Ms. Dianne Jacobetz, MD, Mr. Shadi Malaeb, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, Ms. Kimberly A. Butz, RN, “Security Supervisor ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Jerry Hric, MD, and Mr. Tim Shaw; \$5,000,000 per Defendants Mr. Patrick Philpot, DO, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, “Hospital Leadership Team”, and Ms. Adelaide W. Grace; and \$10,000,000 per Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, Monroe County, Northampton County.

588. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XIII. Fourteenth Amendment

Procedural Due Process

*Violation of Right to Proper Procedural Notice When a Child is Taken into
Protective Custody*

*Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Monroe County,
Mr. Tim Shaw & Ms. Adelaide W. Grace*

589. When a state actor, acting under color of law, without a court order, allows a private entity to separate a parent from their newborn child without probable cause then a special relationship of protective custody between the private entity, the state, and the child arises.

590. The protective custody between the private entity, the state, and the child, as directed by, or assented to by a state actor, gives rise to duties under the Fourteenth Amendment to the United States Constitution.

591. Pa. Code § 6315 allows for children to be taken into protective custody by a private entity or state agency.

592. Pa. Code § 6315 (c)(1) states, "...an individual taking a child into protective custody under this chapter shall immediately, and within 24 hours, in writing, notify the parent, guardian or other custodian of the child of the whereabouts of the child, unless prohibited by court order, and the reasons for the need to take the child into protective custody and shall immediately notify the appropriate county agency in order that proceedings under 42 Pa. C.S. Ch. 63 (relating to juvenile matters) may be initiated, if appropriate.

593. Upon information and belief, no Defendant obtained a court order to place Plaintiff Newborn baby J.A.S. into protective custody and therefore no knowledge about

1 Newborn baby J.A.S. was to be prohibited to Plaintiff parents Mr. and Mrs. Smith by
2 either a private entity, actor, or the state.

3 594. Upon information and belief, Plaintiffs Mr. and Mrs. Smith, within 24-hours of
4 Defendants St. Luke's Hospital, Onsite Neonatal, and OBHG PA taking protective
5 custody of Plaintiff Newborn baby J.A.S., did not ever receive a notice for the rationale
6 of taking Newborn baby J.A.S. into protective custody and the whereabouts of Plaintiff
7 Newborn baby J.A.S.

8 595. Defendants St. Luke's Hospital, Onsite Neonatal, and Monroe County CYS,
9 among other Defendants named in this allegation, had an affirmative duty to contact
10 Plaintiffs Mr. and Mrs. Smith, in writing, about the whereabouts of, and rationale for,
11 placing Plaintiff Newborn baby J.A.S into protective custody.

12 596. Upon information and belief, due to the fact that neither a person, nor an entity,
13 nor a state actor, obtained a court order to place Plaintiff Newborn baby J.A.S. in
14 protective custody, and because Plaintiffs Mr. and Mrs. Smith were not given proper
15 notice of the whereabouts of, and rationale for protective custody in writing, Defendants
16 St. Luke's Hospital, Onsite Neonatal, OBHG PA, and Monroe County CYS, among other
17 Defendants violated Pa. Code § 6315 (c)(1).

18 597. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
19 OBHG PA PA, Monroe County, Mr. Tim Shaw & Ms. Adelaide W. Grace, by virtue of
20 custom, pattern, practice, policy, lack of supervision and/or failure of training and/or
21 discipline, acted in an unconstitutional fashion by not providing proper legal notice to the
22 Plaintiff parents Mr. and Mrs. Smith as to the whereabouts of, and rationale for, taking
23 newborn baby J.A.S. into protective custody.

1 598. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that each individual Defendant State Actor conspired with at least one
3 Defendant Private Actor elsewhere listed in this complaint.

4 599. The conspiracy between the Defendant parties and their agents, employees, or
5 assigns violates *42 U.S.C. § 1983*.

6 600. Upon information and belief, Defendants, St. Luke's Hospital, Onsite Neonatal
7 and OBHG PA Monroe County, Mr. Tim Shaw & Ms. Adelaide W. Grace, under color of
8 law, by not giving proper notice of state created "protective custody" violated Plaintiff
9 Smith Family's rights under the Equal Protection Clause of the Fourteenth Amendment
10 to the United States Constitution.

11 601. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
12 evidence that the Defendant state actor Private Entities St. Luke's Hospital, Onsite
13 Neonatal, and OBHG PA supervised one or more people in connection with this
14 allegation and are therefore liable under a *Monell* legal theory.

15 602. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
16 the evidence that Mr. Tim Shaw violated Mrs. Smith's federal rights, and that supervisor
17 Defendant Ms. Adelaide Grace should be held liable for conduct of subordinate Mr. Tim
18 Shaw, because as supervisor directed the actions in question, or had actual knowledge
19 of the violation and acquiesced to it, or with deliberate indifference to the
20 consequences, established and maintained a policy, practice or custom which directly
21 caused the violation under a *Monell* legal theory.

22 603. Plaintiffs assert this claim is a breach of the Equal Protection Clause pursuant to
23 *42 U.S.C. § 1983*.

1 604. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
2 Defendants' conduct, including but not limited to, emotional and psychological distress,
3 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
4 requests appropriate compensatory damages to account for PTSD therapies and other
5 related treatments as they have been and will continue to be necessary; Plaintiffs
6 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

7 605. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
8 Neonatal, and/or OBHG PA, through its employees, agents, or assigns, and therefore,
9 their ability to afford the appropriate training to avoid this egregious violation of the U.S.
10 Constitution, and Defendants Monroe County through its employees, agents, or
11 assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace's egregious violations of legal
12 obligations to accurately enforce the law, and, since harm was actually caused to the
13 current Plaintiff Smith Family, and since harm is likely to continue to harm future
14 postpartum families, and because the acts of the Defendants and their agents, assigns,
15 or employees callously disregarded the Plaintiff's rights in a reckless and wanton
16 manner, the Plaintiffs respectfully request the imposition of punitive damages on
17 Defendants St. Luke's Hospital, Onsite Neonatal, and/or OBHG PA, Monroe County
18 through its employees, agents, or assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace
19 to deter such Defendants from committing to such conduct in the future which violates
20 the Fourteenth Amendment of the United States Constitution Plaintiffs respectfully
21 request an amount of \$1,000,000 in punitive damages per Defendants Mr. Tim Shaw;
22 \$5,000,000 per Defendants Onsite Neonatal, and OBHG PA; and \$10,000,000 per
23 Defendants St. Luke's Hospital and Monroe County.

606. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XIV. Fourteenth Amendment

Procedural Due Process

Violation of Right to Notice of Basic Rights and Right to Notice of Counsel

When a Child is Taken into Protective Custody

Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Monroe County,

Mr. Tim Shaw & Ms. Adelaide W. Grace

607. When a state actor, acting under color of law, without a court order, allows a private entity to separate a parent from their newborn child without probable cause then a special relationship of protective custody between the private entity, the state, and the child arises.

608. The protective custody between the private entity, the state, and the child, as directed by, or assented to by a state actor, gives rise to duties under the Fourteenth Amendment to the United States Constitution.

609. Pa. Code § 6315 allows for children to be taken into protective custody by a private entity or state agency.

610. Pa. Code § 6315 (f) states, "A conference between the parent, guardian or other custodian of the child taken into temporary protective custody pursuant to this section

1 and the employee designated by the county agency to be responsible for the child shall
2 be held within 48 hours of the time that the child is taken into custody for the purpose of:

3 (3) Explaining to the parent, guardian or other custodian the rights provided for
4 under 42 Pa.C.S. §§ 6337 (relating to right to counsel) and 6338 (relating to other
5 basic rights).”

6 611. On or about 7pm on April 9th, 2021 newborn baby Julian was taken into
7 protective custody by St. Luke’s Hospital, Onsite Neonatal, and OBHG PA.

8 612. By approximately 7pm on April 11th, 2021, there had not been a conference held
9 between the Plaintiffs Mr. and Mrs. Smith, a representative of Defendants St. Luke’s
10 Hospital and/or Onsite Neonatal, and/or OBHG PA, and a representative of either
11 Northampton County or Monroe County Children and Youth Services for the purposes
12 of explaining Plaintiff Newborn baby J.A.S.’s detention or a determination of whether
13 maintaining protective custody was necessary.

14 613. When newborn baby J.A.S. was placed in protective custody against the consent
15 of Plaintiffs Mr. and Mrs. Smith.

16 614. Mr. and Mrs. Smith were not provided with an explanation of rights under 42 Pa.
17 C. S. §§ 6337 (relating to right to counsel) and 6338 (relating to other basic rights) by
18 any Defendant.

19 615. Upon information and belief, due to the fact that neither a person, nor an entity,
20 nor a state actor, obtained a court order to place Plaintiff Newborn baby J.A.S. in
21 protective custody, and because Plaintiffs Mr. and Mrs. Smith were not given notice of
22 their basic rights and their right to counsel within 48-hours of Plaintiff Newborn baby
23 J.A.S. being taken into protective custody, Defendants St. Luke’s Hospital, Onsite

1 Neonatal, OBHG PA, and Monroe County CYS, among other Defendants violated Pa.
2 Code § 6315 (f)(3).

3 616. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
4 OBHG PA, Monroe County, Mr. Tim Shaw & Ms. Adelaide W. Grace, by virtue of
5 custom, pattern, practice, policy, lack of supervision and/or failure of training and/or
6 discipline, acted in an unconstitutional fashion by not providing adequate legal notice of
7 basic rights and right to counsel to the Plaintiff parents Mr. and Mrs. Smith when taking
8 newborn baby J.A.S. into protective custody.

9 617. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
10 evidence that each individual Defendant State Actor conspired with at least one
11 Defendant Private Actor elsewhere listed in this complaint.

12 618. The conspiracy between the Defendant parties and their agents, employees, or
13 assigns violates *42 U.S.C. § 1983*.

14 619. Defendants Monroe County, Mr. Tim Shaw & Ms. Adelaide W. Grace, under
15 color of law, by not giving a legally mandated notice of basic and counsel rights when a
16 state created "protective custody" was created between state actor private Defendants
17 St. Luke's Hospital, Onsite Neonatal, and/or OBHG PA, and Plaintiff Newborn baby
18 J.A.S. violated Plaintiff Smith Family's rights under the Equal Protection Clause of the
19 Fourteenth Amendment to the United States Constitution.

20 620. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
21 evidence that the state actor Defendant Private Entities St. Luke's Hospital, Onsite
22 Neonatal, and OBHG PA supervised one or more people in connection with this
23 allegation and are therefore liable under a *Monell* legal theory because as supervisors

1 directed the actions in question, or had actual knowledge of the violation and
2 acquiesced to it, or with deliberate indifference to the consequences, established and
3 maintained a policy, practice or custom which directly caused the violation.

4 621. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
5 the evidence that Mr. Tim Shaw violated Mrs. Smith's federal rights, and that supervisor
6 Defendant Ms. Adelaide W. Grace should be held liable for conduct of subordinates and
7 Mr. Tim Shaw, because as supervisor directed the actions in question, or had actual
8 knowledge of the violation and acquiesced to it, or with deliberate indifference to the
9 consequences, established and maintained a policy, practice or custom which directly
10 caused the violation.

11 622. Plaintiffs assert this claim is a breach of the Equal Protection Clause pursuant to
12 *42 U.S.C. § 1983*.

13 623. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
14 Defendants' conduct, including but not limited to, emotional and psychological distress,
15 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
16 requests appropriate compensatory damages to account for PTSD therapies and other
17 related treatments as they have been and will continue to be necessary; Plaintiffs
18 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

19 624. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
20 Neonatal, and/or OBHG PA, through its employees, agents, or assigns, and therefore,
21 their ability to afford the appropriate training to avoid this egregious violation of the U.S.
22 Constitution, and Defendants Monroe County through its employees, agents, or
23 assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace's egregious violations of legal

obligations to accurately enforce the law, and, since harm was actually caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, and/or OBHG PA, Monroe County through its employees, agents, or assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace to deter such Defendants from committing to such conduct in the future which violates the Fourteenth Amendment of the United States Constitution Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants Mr. Tim Shaw; \$5,000,000 per Defendants Onsite Neonatal, and OBHG PA; and \$10,000,000 per Defendants St. Luke's Hospital and Monroe County.

625. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XV. Fourteenth Amendment

Procedural Due Process

Violation of Parent's Right to Have Policies and Procedures for the Care and Treatment of an Allegedly Drug-Dependent Child Implemented

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne

1 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr.
2 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
3 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
4 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
5 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD

6 626. When a state actor, acting under color of law, without a court order, allows a
7 private entity to separate a parent from their newborn child without probable cause then
8 a special relationship of protective custody between the private entity, the state, and the
9 child arises.

10 627. The protective custody between the private entity, the state, and the child, as
11 directed by, or assented to by a state actor, gives rise to duties under the Fourteenth
12 Amendment to the United States Constitution.

13 628. *28 Pa. Code § 137.21(b)(12)* outlines policies and procedures for obstetrical
14 services for birth centers and hospitals:

15 (b) Obstetrical services policies and procedures shall include:

16 (12) Policies and procedures for the care and treatments of drug-
17 dependent newborns.

18 629. Newborn baby J.A.S. did not test positive for any illegal methamphetamines, nor
19 did he exhibit signs or symptoms of methamphetamine withdrawal.

20 630. Although, Plaintiff Mrs. Smith was accused of illegal methamphetamine use,
21 Defendants St. Luke's Hospital, Onsite Neonatal, *et al.*, did not implement policies and

1 procedures for the care and treatment of allegedly drug-dependent Newborn baby
2 J.A.S.

3 631. Defendants St. Luke's Hospital, Onsite Neonatal, *et al.*, did not implement the
4 legally mandated policies and procedures for treatment of drug-dependent newborns
5 despite accusing Plaintiffs Mr. and Mrs. Smith of having a newborn baby who was
6 supposedly suffering abuse to such a degree that he needed to be separated from his
7 parents.

8 632. Since Defendants St. Luke's Hospital, Onsite Neonatal, etc., did not implement
9 policies and procedures for the care and treatment of an allegedly drug-dependent
10 Newborn baby J.A.S., Defendants violated *28 Pa. Code § 137.21(b)(12)*.

11 633. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
12 OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
13 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
14 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
15 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
16 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
17 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, by virtue
18 of custom, pattern, practice, policy, lack of supervision and/or failure of training and/or
19 discipline, acted in an unconstitutional fashion by not implementing legally mandated
20 policies and procedures for the care and treatment of an allegedly drug-dependent
21 newborn baby, both prior to and after that newborn baby J.A.S. was taken into
22 protective custody.

1 634. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
2 OBHG PA PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
3 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
4 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
5 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
6 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
7 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, by virtue
8 of custom, pattern, practice, policy, lack of supervision and/or failure of training and/or
9 discipline, acted in an unconstitutional fashion by failing to give proper notice to
10 Plaintiffs Mr. and Mrs. Smith that Newborn baby J.A.S. was suspected of potential
11 withdrawal symptoms due to illegal drug use by his mother Plaintiff Mrs. Smith, by not
12 implementing legally mandated policies and procedures for the care and treatment of an
13 allegedly drug-dependent newborn baby, both prior to and after when Newborn baby
14 J.A.S. was taken into protective custody.

15 635. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
16 evidence that each individual Defendant State Actor conspired with at least one
17 Defendant Private Actor elsewhere listed in this complaint.

18 636. The conspiracy between the Defendant parties and their agents, employees, or
19 assigns violates *42 U.S.C. § 1983*.

20 637. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
21 MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr.
22 Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms.
23 Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly

1 Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve
2 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital
3 Leadership Team", & Mr. Jerry Hric, MD, under color of law, by not giving proper notice
4 to Plaintiffs Mr. and Mrs. Smith that Newborn baby J.A.S. was suspected of illegal drug
5 withdrawal, and by not implementing the state mandated policies and procedures for the
6 care and treatment of an allegedly drug-dependent newborn baby, both prior to and
7 during the manufactured state created "protective custody" situation which was created
8 between private Defendant St. Luke's and Onsite Neonatal, OBHG PA, and Newborn
9 baby J.A.S., violated Plaintiffs Mr. & Mrs. Smith's rights under the Equal Protection
10 Clause of the Fourteenth Amendment to the United States Constitution.

11 638. Upon information and belief, Plaintiffs Mr. & Mrs. Smith can demonstrate by a
12 preponderance of the evidence that employees, agents, or assigns of Defendants St.
13 Luke's Hospital violated Plaintiffs Mr. & Mrs. Smith's federal rights, and that supervisor
14 Defendants should be held liable for conduct of subordinate employees, agents, and
15 assigns, because as supervisors directed the actions in question, or had actual
16 knowledge of the violation and acquiesced to it, or with deliberate indifference to the
17 consequences, established and maintained a policy, practice or custom which directly
18 caused the violation under a *Monell* legal theory.

19 639. Upon information and belief, Plaintiffs Mr. & Mrs. Smith can demonstrate by a
20 preponderance of the evidence that employees, agents, or assigns of Onsite Neonatal
21 violated Plaintiffs Mr. & Mrs. Smith's federal rights, and that supervisor Defendant Mr.
22 Jerry Hric, MD should be held liable for conduct of subordinate employees, agents, and
23 assigns because as supervisor directed the actions in question, or had actual

1 knowledge of the violation and acquiesced to it, or with deliberate indifference to the
2 consequences, established and maintained a policy, practice or custom which directly
3 caused the violation under a *Monell* legal theory.

4 640. Plaintiffs assert the aforementioned claim is a breach of the Equal Protection
5 Clause pursuant to 42 U.S.C. § 1983.

6 641. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
7 Defendants' conduct, including but not limited to, emotional and psychological distress,
8 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
9 requests appropriate compensatory damages to account for PTSD therapies and other
10 related treatments as they have been and will continue to be necessary; Plaintiffs
11 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

12 642. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
13 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
14 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
15 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
16 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
17 MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
18 Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, and
19 therefore, their ability to afford the appropriate training to avoid this egregious violation
20 of the U.S. Constitution, and, since harm was actually caused to the current Plaintiff
21 Smith Family, and since harm is likely to continue to harm future postpartum families,
22 and because the acts of the Defendants and their agents, assigns, or employees
23 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the

Plaintiffs respectfully request the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD to deter such Defendants from committing to such conduct in the future which violates the Fourteenth Amendment of the United States Constitution Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, and Mr. Jerry Hric, MD; \$5,000,000 per Defendants Mr. Patrick Philpot, DO, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and "Hospital Leadership Team"; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia M. Shultz, MD.

643. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XVI. Fourteenth Amendment

Substantive Due Process

*Violation of Mother's Right to Have a Support Person Present for Herself in a
Hospital*

*Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Monroe County, Mr.
Tim Shaw & Ms. Adelaide W. Grace*

644. When a state actor, acting under color of law, without a court order, allows a private entity to separate a parent from their newborn child without probable cause then a special relationship of protective custody between the private entity, the state, and the child arises.

645. The protective custody between the private entity, the state, and the child, as directed by, or assented to by a state actor, gives rise to duties under the Fourteenth Amendment to the United States Constitution.

646. Plaintiff Mrs. Smith was placed in the peculiar position of Defendant St. Luke's Hospital holding her newborn baby in protective custody from Mr. and Mrs. Smith, but Mrs. Smith was allowed a limited set of visitation rights after approximately 9pm on April 10th, 2021 until Newborn baby J.A.S. was discharged days later.

647. Pa. Code § 28 outlines appropriate care for newborns by a private entity or state agency.

648. *28 Pa. Code § 501.48* outlines policies and procedures for birth centers and hospitals:

649. *28 Pa. Code § 501.48 (b)* states, "A support person for each mother shall be required."

1 650. Plaintiff Mrs. Smith's husband Mr. Smith was Plaintiff Mrs. Smith's support
2 person, and was present with her and Newborn baby J.A.S. in the NICU prior to when
3 Mr. and Mrs. Smith were ejected under armed guard from St. Luke's Hospital property.

4 651. On or around 9pm on April 10th Plaintiff Mrs. Smith was allowed to reenter
5 Defendant St. Luke's Hospital under constant male guard where she was reunited with
6 Newborn baby J.A.S. in the NICU.

7 652. Mr. Smith was not allowed to accompany Plaintiff Mrs. Smith to St. Luke's
8 Hospital to be with his newborn baby son J.A.S. or else Defendant St. Luke's Hospital
9 would have Mr. Smith arrested as a trespasser.

10 653. Defendants St. Luke's Hospital, Onsite Neonatal, and OBHG PA expressly
11 forbade Plaintiff Mrs. Smith from having a support person present during a traumatic
12 and anxiety ridden experience with her newborn baby.

13 654. Grandparents of Newborn baby J.A.S., and Plaintiff Mrs. Smith's parents were
14 denied entry to visit their newborn baby grandson on the pretense that Mrs. Smith was
15 not allowed to have visitors accompany her in the NICU, not because of epidemiological
16 concerns, but because the Plaintiff's parents presented a "security risk" to the hospital
17 and they were subsequently escorted off of Defendant St. Luke's Hospital property by
18 guards.

19 655. Upon information and belief, due to the fact that Plaintiff Mrs. Smith was denied a
20 support person for Newborn baby J.A.S., when Pennsylvania Law expressly directs that
21 one is required at all times, Defendants St. Luke's Hospital, Onsite Neonatal, and
22 Monroe County CYS, among other Defendants violated *28 Pa. Code § 501.48*.

1 656. Under a *Monell* legal theory, upon information and belief, Defendants St. Luke's
2 Hospital, Onsite Neonatal, and OBHG PA, by virtue of custom, pattern, practice, policy,
3 lack of supervision and/or failure of training and/or discipline, acted in an
4 unconstitutional fashion by denying Plaintiff parents Mr. and Mrs. Smith to choose or
5 consent to medical care for Newborn baby J.A.S., both prior to and after when Newborn
6 baby J.A.S. was taken into protective custody.

7 657. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
8 evidence that each individual Defendant State Actor conspired with at least one
9 Defendant Private Actor elsewhere listed in this complaint.

10 658. The conspiracy between the Defendant parties and their agents, employees, or
11 assigns violates *42 U.S.C. § 1983*.

12 659. Defendants Monroe County, Mr. Tim Shaw, and Ms. Adelaide W. Grace, under
13 color of law, acting through the Office of Children and Youth Services, by not allowing
14 Plaintiff Mrs. Smith to have a support present with her while she cared for Newborn
15 baby J.A.S. during a state created "protective custody" situation which was created
16 between private Defendant St. Luke's Hospital, Onsite Neonatal, OBHG PA, and
17 Newborn baby J.A.S., violated Plaintiff Smith Family's rights under the Equal Protection
18 Clause of the Fourteenth Amendment to the United States Constitution.

19 660. Plaintiffs assert the aforementioned claim is a breach of the Equal Protection
20 Clause pursuant to *42 U.S.C. § 1983*.

21 661. Plaintiff Mrs. Smith suffered substantial harm as a result of Defendants' conduct,
22 including but not limited to, emotional and psychological distress, pain and suffering,
23 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate

1 compensatory damages to account for PTSD therapies and other related treatments as
2 they have been and will continue to be necessary; Plaintiff respectfully requests an
3 amount of \$59,500 in compensatory damages per Defendant.

4 662. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
5 Neonatal, and/or OBHG PA, and therefore, their ability to afford the appropriate training
6 to avoid this egregious violation of the U.S. Constitution, and, Defendants Monroe
7 County through its employees, agents, or assigns, Mr. Tim Shaw, and Ms. Adelaide. W.
8 Grace's egregious violations of legal obligations to accurately enforce the law, and since
9 harm was actually caused to the current Plaintiff Smith Family, and since harm is likely
10 to continue to harm future postpartum mothers, and because the acts of the Defendants
11 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
12 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
13 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, and/or OBHG
14 PA, Monroe County through its employees, agents, or assigns, Mr. Tim Shaw, and Ms.
15 Adelaide. W. Grace to deter such Defendants from committing to such conduct in the
16 future which violates the Fourteenth Amendment of the United States Constitution
17 Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per
18 Defendants Mr. Tim Shaw; \$5,000,000 per Defendants Onsite Neonatal, and OBHG
19 PA; and \$10,000,000 per Defendants St. Luke's Hospital and Monroe County.

20 663. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
21 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
22 request a nominal judgment of \$1.00.

23 **XVII. Fourteenth Amendment**

Substantive Due Process

Violation of Right to Consent to Legally Suggested Valid

Alternative Treatments for One's Child

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, & OBHG PA

664. The protective custody between the private entity, the state, and the child, as directed by, or assented to by a state actor, gives rise to duties under the Fourteenth Amendment to the United States Constitution.

665. Pa. Code § 28 outlines appropriate care for newborns by a private entity or state agency.

666. 28 Pa. Code § 27.98 directs prophylactic treatment in newborn baby eyes by birth centers and hospitals:

(a) Physicians and midwives attending women in childbirth shall instill in each eye of the newborn child, as soon as practicable after birth, either a 1% silver nitrate solution, or erythromycin ophthalmic ointment or solution as a single application in both conjunctival sacs, or appropriate medication approved by the Department.

667. Prophylactic eye treatments are for treating potential sexually transmitted diseases being transmitted from the infected parent to the newborn infant.

668. Plaintiff Mrs. Smith was tested for all relevant sexually transmitted diseases for which ophthalmic prophylactics are required and tested negative.

1 669. Since there was no cause to treat Newborn baby J.A.S. because Plaintiff Mrs.
2 Smith did not test positive for a sexually transmitted disease, Plaintiffs Mr. and Mrs.
3 Smith requested that Newborn baby J.A.S. not receive ophthalmic prophylactic solution
4 on his eyes.

5 670. When it became clear to Plaintiffs Mr. and Mrs. Smith that Defendant St. Luke's
6 Hospital was going to deny the request for non-treatment of Newborn baby J.A.S.
7 against the will and consent of Plaintiffs Mr. and Mrs. Smith, Plaintiffs specifically
8 requested that since Mr. Smith has a strong allergic reaction to erythromycin, that the
9 Defendants not apply that specific solution to Newborn baby J.A.S.'s eyes.

10 671. Defendants St. Luke's Hospital, Onsite Neonatal, and OBHG PA applied
11 erythromycin ophthalmic solution to Newborn baby J.A.S.'s eyes.

12 672. Upon information and belief, due to the fact that Plaintiff Mr. and Mrs. Smith were
13 denied the right to choose and consent to appropriate medical care for Newborn baby
14 J.A.S., when Pennsylvania Law directs alternatives within the scope of the Plaintiff
15 parents request, Defendants St. Luke's Hospital and Onsite Neonatal among other
16 Defendants violated 28 Pa. Code § 28.22.

17 673. Under a *Monell* legal theory, upon information and belief, Defendants St. Luke's
18 Hospital, Onsite Neonatal, and OBHG PA, by virtue of custom, pattern, practice, policy,
19 lack of supervision and/or failure of training and/or discipline, acted in an
20 unconstitutional fashion by denying Plaintiff parents Mr. and Mrs. Smith to choose or
21 consent to medical care for the child, Newborn baby J.A.S., both prior to and after
22 Newborn baby J.A.S. was taken into manufactured protective custody.

1 674. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that each individual Defendant State Actor conspired with at least one
3 Defendant Private Actor elsewhere listed in this complaint.

4 675. The conspiracy between the Defendant parties and their agents, employees, or
5 assigns violates *42 U.S.C. § 1983*.

6 676. Defendants St. Luke's Hospital, Onsite Neonatal, and OBHG PA, under color of
7 law, by not allowing Plaintiff parents Mr. and Mrs. Smith to choose or consent to
8 Newborn baby J.A.S.'s medical treatment before a state created "protective custody"
9 was created between private Defendants St. Luke's Hospital, Onsite Neonatal, OBHG
10 PA, and Newborn baby J.A.S., violated Plaintiffs Mr. & Mrs. Smith's rights under the
11 Equal Protection Clause of the Fourteenth Amendment to the United States
12 Constitution.

13 677. Plaintiffs assert the aforementioned claim is a breach of the Equal Protection
14 Clause pursuant to *42 U.S.C. § 1983*.

15 678. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
16 Defendants' conduct, including but not limited to, emotional and psychological distress,
17 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
18 requests appropriate compensatory damages to account for PTSD therapies and other
19 related treatments as they have been and will continue to be necessary; Plaintiffs
20 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

21 679. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
22 Neonatal, and/or OBHG PA, and therefore, their ability to afford the appropriate training
23 to avoid this egregious violation of the U.S. Constitution, and, since harm was actually

caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, and/or OBHG PA, Monroe County through its employees, agents, or assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace to deter such Defendants from committing to such conduct in the future which violates the Fourteenth Amendment of the United States Constitution Plaintiffs respectfully request an amount of \$5,000,000 in punitive damages per Defendants Onsite Neonatal, and OBHG PA; and \$10,000,000 per Defendants St. Luke's Hospital and Monroe County.

680. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XVIII. Fourteenth Amendment

Substantive Due Process

Violation of Parent's Right to High Professional Standards in a Hospital

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn

Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly Nardis, CRNP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD

681. The choice to render medical assistance to mothers and their newborn children as a hospital or birthing center, gives rise to duties under the Fourteenth Amendment to the United States Constitution.

682. *28 Pa. Code § 501.46* outlines policies and procedures to ensure that all mothers are treated with respect, dignity, privacy, and safety while in a birth center or hospital:

(a) The birth center shall have written policies and procedures to assure the individual mother the right to dignity, privacy, and safety and shall include, but not be limited to, the items listed in subsection (b).

(b) It is the right of every mother, or support person, to expect and receive:

(1) Good quality care and high professional standards that are continually maintained and reviewed.

683. Upon information and belief, Plaintiffs Mr. and Mrs. Smith, as support person and mother respectively, were not treated with good quality care and high professional standards, as evidenced by, but not limited to, Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, and St. Luke's Obstetrics & Gynecology Associates, confronting sensitive family issues in a

1 confrontational manner, treating Plaintiffs Mr. and Mrs. Smith in an abhorrent manner
2 and spreading false rumors in medical records, treating Plaintiffs Mr. and Mrs. Smith like
3 they were “bad people” for objecting to the type of care demanded by Defendant St.
4 Luke’s Hospital for Newborn baby J.A.S., as well as, forcing a family apart without good
5 cause and in bad faith, and having Plaintiffs Mr. & Mrs. Smith ejected under armed
6 police escort from Defendant St. Luke’s Hospital property under threat of arrest.

7 684. Since Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, St. Luke’s
8 Physicians Group, Bethlehem Neonatal, St. Luke’s Obstetrics & Gynecology
9 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
10 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
11 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
12 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
13 Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly Nardis, CRNP, Mr.
14 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
15 “Hospital Leadership Team”, & Mr. Jerry Hric, MD, by acting in a manner unbecoming of
16 the medical profession, by subjecting the Smith Family to repeated humiliations and
17 degradations, did act in an unprofessional manner, and therefore Defendants violated
18 *28 Pa. Code § 501.46(b)(1)*.

19 685. The actions of Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, St.
20 Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s Obstetrics & Gynecology
21 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
22 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
23 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.

1 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
 2 Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly Nardis, CRNP, Mr.
 3 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
 4 “Hospital Leadership Team”, & Mr. Jerry Hric, MD, “shock the conscience” because of
 5 the degree to which the Defendants’ behavior deviated from standards of professional
 6 care for the medical profession and its auxiliaries has had shocking, traumatic, and far-
 7 reaching consequences.¹⁴

8 686. In the alternative, the actions of Defendants St. Luke’s Hospital, Onsite Neonatal,
 9 OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s Obstetrics &
 10 Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr.
 11 Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
 12 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
 13 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,

¹⁴Compare *Miller v. City of Philadelphia*, 174 F.3d 368, 375-76 (3d Cir. 1999) (“[A] social worker acting to separate parent and child . . . rarely will have the luxury of proceeding in a deliberate fashion . . . As a result, . . . the standard of culpability for substantive due process purposes must exceed both negligence and deliberate indifference, and reach a level of gross negligence or arbitrariness that indeed ‘shocks the conscience.’”). *In arguendo* in the instant case there was plenty of time for all defendants to deliberate their actions and for defendants to act at whatever speed defendants sought fit; and therefore, the standard of culpability should be lowered to negligence, deliberate indifference, or a ‘professional judgement’ standard, down from ‘shocks the conscience’.

1 MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly Nardis,
2 CRNP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn
3 Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, fail a professional
4 judgement standard because their actions were such a substantial departure from
5 accepted professional judgement, practice, or standards as to demonstrate that the
6 Defendants did not actually base their decisions on professional judgement.¹⁵

7 687. Upon information and belief, St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
8 Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
9 Associates, by virtue of custom, pattern, practice, policy, lack of supervision and/or
10 failure of training and/or discipline, acted in an unconstitutional fashion by substantially
11 deviating from professional judgement as a hospital or birthing center.

12 688. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
13 evidence that the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
14 Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
15 Associates, conspired with at least one Defendant State Actor elsewhere listed in this
16 complaint.

17 689. Under a *Monell* legal theory, upon information and belief, Plaintiffs Mr. & Mrs.
18 Smith can demonstrate by a preponderance of the evidence that employees, agents, or
19 assigns of Defendants St. Luke's Hospital, OBHG PA, St. Luke's Physicians Group,

¹⁵See, *Jordan v. City of Philadelphia*, 66 F. Supp. 2d 638, 646 (E.D. Pa. 1999) (quoting
Wendy H. v. City of Philadelphia, 849 F. Supp. 367, 372 (E.D. Pa. 1994) (quoting
Youngberg v. Romeo, 457 U.S. 307, 323 (1982))).

1 Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates violated Plaintiffs
2 Mr. & Mrs. Smith's federal rights, and that supervisor Defendants should be held liable
3 for conduct of subordinate employees, agents, and assigns, because as supervisors
4 directed the actions in question, or had actual knowledge of the violation and
5 acquiesced to it, or with deliberate indifference to the consequences, established and
6 maintained a policy, practice or custom which directly caused the violation.

7 690. Under a *Monell* legal theory, upon information and belief, Plaintiffs Mr. & Mrs.
8 Smith can demonstrate by a preponderance of the evidence that employees, agents, or
9 assigns of Onsite Neonatal violated Plaintiffs Mr. & Mrs. Smith's federal rights, and that
10 supervisor Defendants Mr. Jerry Hric should be held liable for conduct of subordinate
11 employees, agents, and assigns because as supervisor directed the actions in question,
12 or had actual knowledge of the violation and acquiesced to it, or with deliberate
13 indifference to the consequences, established and maintained a policy, practice or
14 custom which directly caused the violation.

15 691. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
16 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
17 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
18 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
19 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
20 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
21 Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly Nardis, CRNP, Mr.
22 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
23 "Hospital Leadership Team", & Mr. Jerry Hric, MD, by substantially deviating from

1 professional judgement in a professional hospital setting violated Plaintiff's rights under
2 the Equal Protection Clause of the Fourteenth Amendment to the United States
3 Constitution.

4 692. Plaintiffs assert the aforementioned claim is a breach of the Equal Protection
5 Clause of the Fourteenth Amendment pursuant to *42 U.S.C. § 1983*.

6 693. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
7 conduct, including but not limited to, emotional and psychological distress, pain and
8 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
9 appropriate compensatory damages to account for PTSD therapies and other related
10 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
11 request an amount of \$84,800 in compensatory damages per Defendant.

12 694. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
13 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
14 Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz,
15 MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
16 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
17 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
18 Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly
19 Nardis, CRNP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
20 Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, and therefore, their
21 ability to afford the appropriate training to avoid this egregious violation of the U.S.
22 Constitution, and, since harm was actually caused to the current Plaintiff Smith Family,
23 and since harm is likely to continue to harm future postpartum families, and because the

1 acts of the Defendants and their agents, assigns, or employees callously disregarded
2 the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request
3 the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
4 OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics &
5 Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr.
6 Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
7 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
8 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
9 MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly Nardis,
10 CRNP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn
11 Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, to deter such Defendants
12 from committing to such conduct in the future which violates the Fourteenth Amendment
13 of the United States Constitution Plaintiffs respectfully request an amount of \$1,000,000
14 in punitive damages per Defendants Mr. Jerry Hric, MD, Ms. Patricia Bates, CRNP, Ms.
15 Kimberly Nardis, CRNP, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
16 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
17 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, and Mr. Gilberto
18 Santiago, MD; \$5,000,000 per Defendants Mr, Steve Lanshe, Esq., Mr. Robert L. Wax,
19 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", Ms. Chaminie
20 Wheeler, MD, and Mr. Patrick Philpot, DO; and \$10,000,000 per Defendants St. Luke's
21 Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
22 Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, and
23 Ms. Cynthia M. Shultz, MD.

1 695. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
2 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
3 request a nominal judgment of \$1.00.

4 **XIX. Fourteenth Amendment**

5 **Substantive Due Process**

6 **Violation of Right to be Treated with Dignity and Respect in a Hospital**

7 **Smith, et al. v. Monroe County & St. Luke's Hospital**

8 696. Defendant Monroe County acting through the Office of Child and Youth Services;
9 Defendant, Northampton County acting through the Bethlehem Police Department; and,
10 Defendant St. Luke's Hospital acting through its agents, employees, and/or assigns,
11 acted in concert with one another, followed a practice, and/or entered into an agreement
12 or understanding to violate Plaintiffs Mr. and Mrs. Smith's and Newborn baby J.A.S.'s
13 Fourteenth Amendment substantive due process right to be treated with dignity and
14 respect at all times while in a hospital setting.

15 697. Monroe County CYS, by virtue of a custom, pattern, practice, policy, and/or
16 failure to appropriately train and/or discipline, acquiesced in and/or has otherwise
17 authorized its caseworkers to violate citizens' rights as protected by the United States
18 Constitution by initiating unwarranted, highly intrusive, humiliating, and coercive child
19 abuse investigations into new mothers, their support persons, and their families, thereby
20 depriving Plaintiffs of respect and dignity.

1 698. Monroe County CYS investigations include, but are not limited to: unannounced,
2 non-consensual entry into J.A.S.'s hospital unit where it was known that Plaintiff Mrs.
3 Smith was breastfeeding to inform Mrs. Smith that she is suspected of child abuse and
4 subject to a child abuse investigation; carrying out unjustified, unannounced, and
5 coercive home inspections soon after Newborn baby J.A.S.'s birth; subjecting Plaintiff
6 Mr. Smith to highly intrusive, humiliating, and coercive interrogations by a social worker
7 in front of friends and family; maintaining an open case well beyond what was
8 necessary for CYS to establish if child abuse had taken place; repeated and
9 unnecessary examinations of all of the Smith children, even after it was easily
10 established that none of them had been abused or were in danger of abuse; coercive
11 demands to provide repetitive and unnecessary bodily fluid samples; and, the prying
12 into and demand to allow government social workers and/or investigators to have
13 unfettered access to confidential and personal medical records, thereby depriving
14 Plaintiffs of respect and dignity.

15 699. At all times relevant, Defendant St. Luke's Hospital was aware that its actions,
16 carried out in concert with the BPD, and Monroe County CYS, included but were not
17 limited to initiating unwarranted, highly intrusive, humiliating, and coercive child abuse
18 investigations into new mothers, and that said actions would result in the violation of the
19 Plaintiffs' Fourteenth Amendment right to be treated with respect and dignity in a
20 hospital setting at all times.

21 700. Defendants Monroe County and St. Luke's Hospital acted intentionally to deprive
22 Plaintiffs of their constitutional rights under the Fourteenth Amendment, or acted in
23 wanton, reckless disregard of those rights.

1 701. The conspiracy between the Defendant parties and their agents, employees, or
2 assigns violates *42 U.S.C. § 1983*.

3 702. Monroe County and St. Luke's Hospital's actions were taken in deliberate
4 indifference to Plaintiffs' rights as protected by the United States Constitution under the
5 Fourteenth Amendment to be free from government intrusion into family privacy,
6 including the birth of a child.

7 703. Plaintiffs assert these claims pursuant to *42 U.S.C. § 1983*.

8 704. Plaintiffs have suffered substantial harm as a result of Defendants' conduct,
9 including but not limited to, emotional and psychological pain and suffering and injury to
10 their reputations.

11 705. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
12 Defendants' conduct, including but not limited to, emotional and psychological distress,
13 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
14 requests appropriate compensatory damages to account for PTSD therapies and other
15 related treatments as they have been and will continue to be necessary; Plaintiffs
16 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

17 706. Given the substantial wealth of the Defendants Monroe County and St. Luke's
18 Hospital and therefore, their ability to afford the appropriate training to avoid this
19 egregious violation of the U.S. Constitution, and, since harm was actually caused to the
20 current Plaintiff Smith Family, and since harm is likely to continue to harm future
21 postpartum families, and because the acts of the Defendants and their agents, assigns,
22 or employees callously disregarded the Plaintiff's rights in a reckless and wanton
23 manner, the Plaintiff respectfully requests the imposition of punitive damages on

Defendants Monroe County and St. Luke's Hospital to deter such Defendants from committing to such conduct in the future which violates the Fourteenth Amendment of the United States Constitution Plaintiffs respectfully request an amount of \$10,000,000 in punitive damages per Defendants Monroe County and St. Luke's Hospital.

707. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XX. Fourteenth Amendment

Substantive Due Process

Right to be Free of State-Created Danger

Smith et al. v. Northampton County, Bethlehem Township, Officer Andrew

Keyock, Officer Thomas A. Smith, Corporal Kirk Harryn, & Chief Daniel Pancoast

708. Defendants Northampton County and Bethlehem Township acting through the Bethlehem Township Police Department and specifically its Defendant Officers Andrew Keyock and Thomas A. Smith, and, St. Luke's Hospital, acting through its agents, employees, and/or assigns, acted in concert with one another, followed a practice, and/or entered into an agreement or understanding to violate Plaintiffs Mr. and Mrs. Smith's and Newborn baby J.A.S.'s Fourteenth Amendment substantive due process right to be free of state-created danger.

709. At all times relevant, Officers Andrew Keyock and Thomas A. Smith were police officers acting under color of law and within the scope of their duties.

1 710. To prevail on a state-created danger claim Plaintiffs will demonstrate that
2 Defendant Officers Andrew Keyock and Thomas A. Smith (1) the harm [they] ultimately
3 caused was foreseeable and fairly direct; (2) the defendants possessed the requisite
4 degree of culpable intent; (3) there existed some relationship between the state and the
5 plaintiff; and (4) the state actors used their authority to create an opportunity that
6 otherwise would not have existed” for harm to occur. *Estate of Smith v. Marasco*, 318
7 F.3d 497, 506 (3d Cir. 2003).

8 711. The first element of Plaintiffs’ claim primarily concerns the elements of
9 “foreseeability” and “directness”.

10 712. “Foreseeability” concerns whether the Defendant Officers Keyock and Smith
11 should have foreseen the harm at issue.¹⁶

12 713. “Directness” concerns whether the Defendant Officers chain of causation is too
13 attenuated for liability to attach; in other words, were the Defendant Officers Keyock and
14 Smith “fairly directly” the cause of the Plaintiff Smiths harm?¹⁷

¹⁶See, e.g., *Marasco*, 318 F.3d at 508 (“[T]he Smiths have presented sufficient evidence to allow a jury to find that at least some of the officers were aware of Smith's condition and should have foreseen that he might flee and suffer adverse medical consequences when SERT was activated.”)

¹⁷*Henry v. Erie*, 25 728 F.3d 275, 285 (3d Cir. 2013) The Court of Appeals affirmed the dismissal of a complaint alleging that state officials subsidized the rent at an apartment while failing to enforce housing standards requiring smoke detectors and an alternative means of egress because such alleged actions did not lead “fairly directly” to the fire

1 714. The second element of Plaintiffs' claim must demonstrate that, "[T]he state's
2 actions must evince a willingness to ignore a foreseeable danger or risk." *Morse*, 132
3 F.3d at 910.

4 715. For a § 1983 state-created danger claim two standards of culpability are possible
5 depending on the facts, either (1) a "deliberate indifference" standard;¹⁸ and, (2) a
6 "shocks the conscience" standard.

7 716. Plaintiffs request the Court find that the standard for the second element is
8 "deliberate indifference" because Defendant Officers did not have any information that
9 would place them in a hyperpressurized environment.

10 717. As well, Plaintiffs request the Court find that the standard for the second element
11 is "deliberate indifference" because the risk of the entire Smith Family being separated
12 from one another was so obvious that the Defendant Officers Andrew Keyock and
13 Thomas A. Smith should have perceived the risk.¹⁹

that claimed the plaintiffs' lives. Rather than being "close in time and succession," the
alleged actions by the defendants were "separated from the ultimate harm by a lengthy
period of time and intervening forces and actions." In this instant case however, actions
happened in close time and succession.

¹⁸For a cue towards the "deliberate indifference standard", see *Phillips*, 515 F.3d at 241,
in which the court of appeals held that the deliberate indifference standard applied to
the dispatchers because they "had no information which would have placed them in a
'hyperpressurized environment.'")

¹⁹*Sanford*, 456 F.3d at 309 & n.13.

1 718. Even if the Court chooses that the standard should be “shocks the conscience”
2 Plaintiffs believe that they can meet this higher standard as well.

3 719. Plaintiffs hold the belief that they can, if necessary, meet the higher standard of
4 “shocks the conscience” because, ““the precise degree of wrongfulness required to
5 reach the conscience-shocking level depends on the circumstances of a particular
6 case.” *Marasco*, 318 F.3d at 508.²⁰

7 720. Upon information and belief, Plaintiffs Mr. and Mrs. Smith and Newborn baby
8 J.A.S. can demonstrate more than mere negligence on the part of Defendant Officers
9 Keyock and Smith, and can demonstrate that by consciously disregarding risk of great
10 harm,²¹ both officers engaged in affirmative acts against the Plaintiffs’ that separated

²⁰See also, *Marasco*, 318 F.3d at 508 (quoting *Miller*, 174 15 F.3d at 375). “For example, in the custodial situation of a prison, where forethought about an inmate's welfare is possible, deliberate indifference to a prisoner's medical needs may be sufficiently shocking, while ‘[a] much higher fault standard is proper when a government official is acting instantaneously and making pressured decisions without the ability to fully consider the risks.’”

²¹*Sanford*, 456 F.3d at 310.

1 Plaintiffs Mr. and Mrs. Smith from Newborn baby J.A.S.²² which “reach a level of gross
2 negligence or arbitrariness that indeed “shocks the conscience.”²³
3 721. The third element of Plaintiffs’ claim must demonstrate that there exists a
4 relationship between the state and the Plaintiffs during which the defendant state actors
5 placed the victim Plaintiffs in danger of foreseeable injury, either as individuals or as a

²²*Schieber v. City of Philadelphia*, 320 F.3d 409, 419 (3d Cir. 2003) (opinion of Stapleton, J.) (“[N]egligence is not enough to shock the conscience under any circumstances. . . . [M]ore culpability is required to shock the conscience to the extent that state actors are required to act promptly and under pressure. Moreover, the same is true to the extent the responsibilities of the state actors require a judgment between competing, legitimate interests.”); *id.* at 423 (reversing denial of summary judgment to police officers sued by parents who alleged their daughter was murdered after officers responded to 911 call but failed to enter daughter’s apartment, “[b]ecause the record would not support a finding of more than negligence on the part of” the officers); see *also id.* at 423 (Nygaard, J., concurring) (stating that he did “not disagree with [Judge Stapleton’s] analysis as far as it goes” but that the crux of the case was the plaintiff’s failure to show an affirmative act on the part of the police).

²³See *Miller*, 2 174 F.3d at 375-76 & n.7.

discrete class. *Kneipp v. Tedder*, 95 F.3d 1199, 1209 (3d Cir. 1996).²⁴ See also *Marasco*, 318 F.3d at 507.²⁵

722. As well, the defendant state actor must not cause a threat to the general population but to discrete individuals. *Morse*, 132 F.3d at 913 (citing *Martinez v. California*, 444 U.S. 277, 285 (1980)).

723. Upon information and belief, the Plaintiffs, Mr. and Mrs. Smith and Newborn baby J.A.S., were each individuals or a discrete class as opposed to the general population because Defendant Officers Andrew Keyock and Thomas A. Smith were not interested in separating any families other than the Defendant Smith Family.

724. Upon information and belief, because the whole issue at hand was whether without probable cause or a court order directing the actions of the Defendant Officers, was if the Defendant Officers Keyock and Smith would sanction St. Luke's Hospital's assertion that the Smith Family should be forcefully separated from one another and that the parents, Plaintiffs Mr. and Mrs. Smith should be ejected from the hospital, it was foreseeable that harm would come to the entire Plaintiff Smith Family through the affirmative act of breaking up their family.

²⁴Holding that jury could find third element met where defendant, "exercising his powers as a police officer, placed [the plaintiff] in danger of foreseeable injury when he sent her home unescorted in a visibly intoxicated state in cold weather."

²⁵ ("In *Morse* we held that the third requirement – a relationship between the state and the plaintiff – ultimately depends on whether the plaintiff was a foreseeable victim, either individually or as part of a discrete class of foreseeable victims.").

1 725. The Court of Appeals has summarized the fourth element's requirements thus:
2 "The three necessary conditions to satisfy the fourth element of a state-created danger
3 claim are that: (1) a state actor exercised his or her authority, (2) the state actor took an
4 affirmative action, and (3) this act created a danger to the citizen or rendered the citizen
5 more vulnerable to danger than if the state had not acted at all."²⁶

6 726. The Court of Appeals reasoned in *Bright* that an assurance that someone will be
7 arrested does not meet the affirmative-act requirement, 443 F.3d at 284.

8 727. Upon information and belief, the Plaintiff Smith Family alleges that (1) that
9 Defendant Officers Andrew Keyock and Thomas A. Smith each exercised their authority
10 under color of law; and (2) Defendant Officers Andrew Keyock and Thomas A. Smith
11 took more than the affirmative act of threatening to arrest Plaintiffs Mr. and Mrs. Smith.

12 728. Defendant Officers actions consisted of, but were not limited to, affirmatively
13 using confidential medical records given to them by St. Luke's Hospital to illegally reach
14 conclusions as to the culpability of Plaintiffs Mr. and Mrs. Smith; Defendant Officers
15 affirmatively blocked Plaintiffs Mr. and Mrs. Smith's vehicle outside the hospital
16 entrance; Defendant Officers actively guarded Plaintiffs Mr. and Mrs. Smith so that they
17 could not enter the NICU, nor move freely about the waiting area, nor have any privacy
18 to discuss their current situation; Defendant Officers then affirmatively conferenced with
19 St. Luke's Hospital doctors and staff without Plaintiffs Mr. and Mrs. Smith present as to
20 what the fate of the Smith Family should be; Defendant Officers then affirmatively
21 sanctioned that St. Luke's Hospital may separate Plaintiff Newborn baby J.A.S. from

²⁶ *Ye v. United States*, 484 F.3d 634, 639 (3d Cir. 2007).

1 Plaintiffs Mr. and Mrs. Smith; Defendant Officers then affirmatively, without court order
2 or probable cause, escorted Mr. and Mrs. Smith from the hospital under guard as if they
3 were prisoners; and then affirmatively forcefully ejected postpartum Mrs. and Mr. Smith,
4 then Defendant Officers affirmatively threatened to arrest Mr. or Mrs. Smith if they ever
5 returned to St. Luke's Hospital property, even if the only reason that they would return
6 would to be to retrieve their child; and,

7 729. (3) Each of the affirmative acts by Defendant Officers Andrew Keyock and
8 Thomas A. Smith created and/or rendered Plaintiffs Mr. and Mrs. Smith and Newborn
9 baby J.A.S. more vulnerable to danger, because but for the actions of the Defendant
10 Officers, St. Luke's Hospital would not have been able to keep Plaintiffs Mr. and Mrs.
11 Smith separated from Plaintiff Newborn baby J.A.S.; therefore, if the state had not acted
12 at all, Plaintiffs Mr. and Mrs. Smith and Plaintiff Newborn baby J.A.S. would not have
13 been able to be harmed by the act of forceful separation because they would have been
14 together.

15 730. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
16 evidence that the Defendant State Actors conspired with at least one Defendant Private
17 Actor elsewhere listed in this complaint.

18 731. The conspiracy between the Defendant parties and their agents, employees, or
19 assigns violates *42 U.S.C. § 1983*.

20 732. Upon information and belief, Defendants Northampton County, Bethlehem
21 Township, and Officers Andrew Keyock and Thomas A. Smith by virtue of custom,
22 pattern, practice, policy, lack of supervision and/or failure of training and/or discipline,
23 acted in an unconstitutional fashion by separating parents from their newborn child

1 without a court order, based solely on a report that the hospital had unconfirmed and
2 undifferentiated drug test results for legal amphetamines and illegal
3 methamphetamines, and without any basis to believe that the mother abused or
4 neglected her child.

5 733. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
6 can demonstrate by a preponderance of the evidence that Officers Andrew Keyock and
7 Thomas A. Smith violated Plaintiff Smith Family's federal rights, and that supervisor
8 Defendants Corporal Harryn and Chief Pancoast should be held liable for conduct of
9 subordinate Officers Andrew Keyock and Thomas A. Smith, because as supervisors
10 directed the actions in question, or had actual knowledge of the violation and
11 acquiesced to it, or with deliberate indifference to the consequences, established and
12 maintained a policy, practice or custom which directly caused the violation.

13 734. Defendants Officers Andrew Keyock and Thomas A. Smith, and Northampton
14 County, acting through the Bethlehem Police Department, violated Plaintiff's rights
15 under the Equal Protection Clause of the Fourteenth Amendment to the United States
16 Constitution.

17 735. Plaintiffs assert the aforementioned claim is a breach of the Equal Protection
18 Clause pursuant to 42 U.S.C. § 1983.

19 736. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
20 Defendants' conduct, including but not limited to, emotional and psychological distress,
21 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
22 requests appropriate compensatory damages to account for PTSD therapies and other

1 related treatments as they have been and will continue to be necessary; Plaintiffs
2 respectfully request an amount of \$84,800 in compensatory damages per Defendant.
3 737. Given the substantial wealth of the Defendants Northampton County and
4 Bethlehem Township, and therefore, their ability to afford the appropriate training to
5 avoid this egregious violation of the U.S. Constitution, and Defendant Northampton
6 County through its employees, agents, or assigns, Officers Andrew Keyock & Thomas
7 A. Smith, Corporal Kirk Harryn, & Chief Daniel Pancoast, had legal obligations to
8 accurately enforce the law, and, since harm was actually caused to the current Plaintiff
9 Smith Family, and since harm is likely to continue to harm future postpartum families,
10 and because the acts of the Defendants and their agents, assigns, or employees
11 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the
12 Plaintiffs respectfully request the imposition of punitive damages on Defendants
13 Northampton County, and Bethlehem Township, and Officers Andrew Keyock &
14 Thomas A. Smith, Corporal Kirk Harryn, and Chief Daniel Pancoast to deter such
15 Defendants from committing to such conduct in the future which violates the Fourteenth
16 Amendment of the United States Constitution Plaintiffs respectfully request an amount
17 of \$1,000,000 in punitive damages per Defendants Officer Andrew Keyock, and Officer
18 Thomas A. Smith; \$5,000,000 per Defendants Corporal Kirk Harryn, and Chief Daniel
19 Pancoast; and \$10,000,000 per Defendants Northampton County and Bethlehem
20 Township.

21 738. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
22 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
23 request a nominal judgment of \$1.00.

1 **XXI. Fourteenth Amendment**

2 Substantive Due Process

3 Violation of Right to be Free from Government Intrusion into Family Privacy.

4 Including the Birth of a Child

5 Smith, et al. v. Monroe County, Northampton County, Bethlehem Township & St.

6 Luke's Hospital

7 739. Defendant Monroe County acting through the Office of Child and Youth Services;
8 Defendants, Northampton County and Bethlehem Township acting through the
9 Bethlehem Police Department; and, Defendant St. Luke's Hospital acting through its
10 agents, employees, and/or assigns, acted in concert with one another, followed a
11 practice, and/or entered into an agreement or understanding to violate Plaintiffs Mr. and
12 Mrs. Smith and Newborn baby J.A.S.'s Fourteenth Amendment substantive due process
13 right to be free from government intrusion into family privacy, including the birth of a
14 child.

15 740. Monroe County CYS, by virtue of a custom, pattern, practice, policy, and/or
16 failure to appropriately train and/or discipline, acquiesced in and/or has otherwise
17 authorized its caseworkers to violate citizens' rights as protected by the United States
18 Constitution by initiating unwarranted, highly intrusive, humiliating, and coercive child
19 abuse investigations into new mothers and their families.

20 741. Monroe County CYS investigations include, but are not limited to: unannounced,
21 non-consensual entry into J.A.S.'s hospital unit where it was known that Plaintiff Mrs.

1 Smith was breastfeeding to inform Mrs. Smith that she is suspected of child abuse and
2 subject to a child abuse investigation; carrying out unjustified, unannounced, and
3 coercive home inspections within days of Newborn baby J.A.S's birth; subjecting
4 Plaintiff Mr. Smith to highly intrusive, humiliating, and coercive interrogations by a social
5 worker, in front of friends and family; maintaining an open case well beyond what was
6 necessary for CYS to establish if child abuse had taken place; repeated and
7 unnecessary examinations of all of the Smith children, even after it was easily
8 established that none of them had been abused or were in danger of abuse; coercive
9 demands to provide repetitive and unnecessary bodily fluid samples; and, the prying
10 into and demand to allow government social workers and/or investigators to have
11 unfettered access to confidential personal and other family members medical records.

12 742. Defendants, Northampton County and Bethlehem Township acting through the
13 Bethlehem Police Department, by virtue of a custom, pattern, practice, policy, and/or
14 failure to appropriately train or discipline, acquiesced in and/or has otherwise authorized
15 its police officers to violate citizens' constitutional rights by initiating unwarranted, highly
16 intrusive, and under threat of loss of freedom, warrantless, without a duly appointed
17 judge's order, or reasonable suspicion that a crime had taken place, did knowingly and
18 forcefully separate a mother and father from their newborn child with information solely
19 obtained from unfettered access to confidential medical records.

20 743. At all times relevant, Defendant St. Luke's Hospital was aware that its actions,
21 carried out in concert with the BPD, and Monroe County CYS, included but were not
22 limited to its unwarranted disclosure of personal confidential medical information to the
23 BPD and Monroe County CYS, and that said actions would result in the violation of the

1 Plaintiffs' Fourteenth Amendment right to be free from government intrusion into family
2 privacy, including upon the birth of a child.

3 744. Defendants Monroe County, Northampton County, Bethlehem Township and St.
4 Luke's Hospital acted intentionally to deprive Plaintiffs of their constitutional rights under
5 the Fourteenth Amendment, or acted in wanton, reckless, disregard of those rights.

6 745. The conspiracy between the Defendant parties and their agents, employees, or
7 assigns violates *42 U.S.C. § 1983*.

8 746. Defendants Monroe County, Northampton County, Bethlehem Township, and St.
9 Luke's Hospital's actions were taken in deliberate indifference to Plaintiffs' rights as
10 protected by the United States Constitution under the Fourteenth Amendment to be free
11 from government intrusion into family privacy, including the birth of a child.

12 747. Plaintiffs assert these claims pursuant to *42 U.S.C. § 1983*.

13 748. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
14 Defendants' conduct, including but not limited to, emotional and psychological distress,
15 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
16 requests appropriate compensatory damages to account for PTSD therapies and other
17 related treatments as they have been and will continue to be necessary; Plaintiffs
18 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

19 749. Given the substantial wealth of the Defendants Monroe County, Northampton
20 County, and Bethlehem Township, and St. Luke's Hospital and therefore, its ability to
21 afford the appropriate training to avoid this egregious violation of the U.S. Constitution,
22 and, since harm was actually caused to the current Plaintiff Smith Family, and since
23 harm is likely to continue to harm future postpartum families, and because the acts of

1 the Defendants and their agents, assigns, or employees callously disregarded the
2 Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the
3 imposition of punitive damages on Defendants Monroe County, Northampton County,
4 and Bethlehem Township, and St. Luke's Hospital to deter such Defendants from
5 committing to such conduct in the future which violates the Fourteenth Amendment of
6 the United States Constitution Plaintiffs respectfully request an amount of \$10,000,000
7 in punitive damages per Defendants Monroe County, Northampton County, Bethlehem
8 Township, and St. Luke's Hospital.

9 750. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
10 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
11 request a nominal judgment of \$1.00.

12 **XXII. Fourteenth Amendment**

13 **Substantive Due Process**

14 **Violation of Right to Privacy in Personal and Confidential Medical Records**

15 **Mrs. Grace Smith & Newborn baby J.A.S. v. Monroe County, Northampton**

16 **County, & St. Luke's Hospital**

17 751. Upon information and belief, Defendant Monroe County acting through the Office
18 of Child and Youth Services; Defendant, Northampton County acting through the
19 Bethlehem Police Department; and, Defendant St. Luke's Hospital acting through its
20 agents, employees, and/or assigns, acted in concert with one another, followed a
21 practice, and/or entered into an agreement or understanding to violate Plaintiff Mrs.

1 Smith's and Newborn baby J.A.S.'s Fourteenth Amendment substantive due process
2 right to privacy in their confidential personal medical records.

3 752. Defendants St. Luke's Hospital, the BPD, and Monroe County CYS each acted in
4 furtherance of an agreement or understanding.

5 753. Upon information and belief, Defendant St. Luke's Hospital had a policy
6 specifically requiring its employees to report to local police departments and to Children
7 and Youth Services, drug tests for legal amphetamines and illegal methamphetamines
8 that are inconclusive and undifferentiated.

9 754. Defendant St. Luke's Hospital was not privileged, nor was it required to report the
10 results of inconclusive and undifferentiated drug tests to local police, in this case the
11 Bethlehem Police Dept., nor to any Children and Youth Services agency.

12 755. Defendant Monroe County CYS encouraged Defendant St. Luke's Hospital to
13 continue to violate Plaintiffs' rights by accepting records which it knew Defendant St.
14 Luke's Hospital was not privileged or legally required to disclose, and, based solely on
15 these records, initiated unwarranted highly intrusive, humiliating, and coercive child
16 abuse instigations.

17 756. Defendant Northampton County acting through the BPD encouraged Defendant
18 St. Luke's Hospital to continue to violate Plaintiffs' rights by accepting records which it
19 knew Defendant St. Luke's Hospital was not privileged or legally required to disclose,
20 and, based solely on these records, initiated an unwarranted, traumatic, and forceful,
21 ejection of Mr. and Mrs. Smith from Defendant St. Luke's Hospital under threat of arrest
22 for trespassing.

1 757. The conspiracy between the Defendant parties and their agents, employees, or
2 assigns violates *42 U.S.C. § 1983*.

3 758. The Defendant parties and their agents, employees, or assigns acted in concert
4 with one another to deprive Plaintiffs of their rights as protected by the United States
5 Constitution under the Fourteenth Amendment, or acted in a wanton, reckless disregard
6 of those rights.

7 759. Defendants Monroe County, Northampton County, and St. Luke's Hospital by
8 virtue of a custom, pattern, practice, policy, and/or failure to appropriately train and/or
9 discipline, acquiesced in and/or has otherwise authorized its agents, employees,
10 assigns, and/or caseworkers to violate citizens' rights as protected by the United States
11 Constitution by initiating unwarranted, highly intrusive, humiliating, and coercive child
12 abuse investigations into new mothers and their families.

13 760. Plaintiffs assert these claims pursuant to 42 U.S.C. §1983.

14 761. Plaintiff Mrs. Smith has suffered substantial harm as a result of Defendants'
15 conduct, including but not limited to, emotional and psychological distress, pain and
16 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
17 appropriate compensatory damages to account for PTSD therapies and other related
18 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
19 requests an amount of \$59,500 in compensatory damages per Defendant.

20 762. Given the substantial wealth of the Defendants Monroe County, Northampton
21 County, and St. Luke's Hospital and therefore, its ability to afford the appropriate
22 training to avoid this egregious violation of the U.S. Constitution, and, since harm was
23 actually caused to the current Plaintiffs Mrs. Smith and Newborn baby J.A.S., and since

1 harm is likely to continue to harm future postpartum families, and because the acts of
2 the Defendants and their agents, assigns, or employees callously disregarded the
3 Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the
4 imposition of punitive damages on Defendants Monroe County, Northampton County,
5 and St. Luke's Hospital to deter such Defendants from committing to such conduct in
6 the future which violates the Fourteenth Amendment of the United States Constitution
7 Plaintiffs respectfully request an amount of \$10,000,000 in punitive damages per
8 Defendants Monroe County, Northampton County, and St. Luke's Hospital.

9 763. In the unlikely event that the jury does not find that Plaintiffs Mrs. Smith and
10 Newborn baby J.A.S. suffered any actual injury despite the deprivation of their federal
11 rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

12 **XXIII. Fourteenth Amendment**

13 **Special Relationship**

14 **Violation of Protection from State Actors Creating a Special Relationship**

15 **between a Child and a Private Entity Without Sufficient Cause**

16 **Smith, et al. v. Northampton County, Officers Andrew Keyock & Thomas A. Smith,**

17 **Corporal Kirk Harryn, & Chief Daniel Pancoast**

18 764. When a state actor, acting under color of law, without a court order, allows a
19 private entity to separate a parent from their newborn child without probable cause then
20 a special relationship of care between the private entity and the child arises.

1 765. The special relationship between the private entity and the child, as assented to
2 by a state actor, gives rise to duties under the Fourteenth Amendment to the United
3 States Constitution.

4 766. In order to establish a claim Plaintiffs must prove that (1) each Defendant Police
5 Officer and their Supervisors acted with deliberate indifference when they allowed
6 Plaintiff Newborn baby J.A.S. to be detained by St. Luke's Hospital without consent and
7 against the wishes of the Plaintiff parents; and, (2) Plaintiffs were harmed by that
8 detainment.

9 767. Upon information and belief, Plaintiffs Mr. and Mrs. Smith allege that all
10 Defendant Police Officers and their Supervisors violated their duty to prevent a
11 formation of a special relationship between the St. Luke's Hospital and Plaintiff Newborn
12 baby J.A.S. when they condoned St. Luke's Hospital's actions and each other's by
13 separating Plaintiffs Mr. and Mrs. Smith from Newborn baby J.A.S. under threat of
14 arrest.

15 768. Plaintiffs Mr. and Mrs. Smith allege under information and belief, that do to the
16 fact that no Defendant obtained a court order or found probable cause that a crime was
17 being committed, had a duty to prevent the formation of a special relationship between
18 St. Luke's Hospital and Plaintiff Newborn baby J.A.S., and instead had an affirmative
19 duty to reaffirm the Plaintiff parent's right to St. Luke's Hospital that Mr. & Mrs. Smith
20 should be with their newborn child.

21 769. By not reaffirming the Plaintiff parent's request to withdrawal consent for Plaintiff
22 Newborn baby J.A.S. and to reunite parents with their child, all Defendant Police

1 Officers and their Supervisors acted with deliberate indifference to the welfare of
2 Plaintiffs Newborn baby J.A.S. and Mr. & Mrs. Smith.

3 770. All Defendant Police Officers and their Supervisors knew or should have known
4 that by agreeing to St. Luke's Hospital's demands to remove Plaintiffs Mr. and Mrs.
5 Smith from St. Luke's property without Plaintiff Newborn baby J.A.S. that Newborn baby
6 J.A.S. would be submitted to a sterile unwelcoming environment, needlesticks, various
7 unnecessary testing, time away from both parents shortly after birth including time for
8 skin-to-skin contact, time away from his mother during first few days of breastfeeding,
9 and various treatments done to Plaintiff Newborn baby J.A.S. against the consent and
10 will of Plaintiffs Mr. and Mrs. Smith.

11 771. The actions of all Defendant Police Officers and their Supervisors also "shock the
12 conscience" because of the degree to which it was clear that failure to act on behalf of
13 the parents to be with their child would have shocking, traumatic, and far-reaching
14 consequences.²⁷

15 772. In the alternative, the actions of Defendant Officers and their Supervisors fail a
16 professional judgement standard because their actions were such a substantial
17 departure from accepted professional judgement, practice, or standards as to

²⁷See Footnote 14.

1 demonstrate that the Defendant Officers did not actually base their decisions on
2 professional judgement.²⁸

3 773. Upon information and belief, Defendant Officers Andrew Keyock and Thomas A.
4 Smith, by virtue of custom, pattern, practice, policy, lack of supervision and/or failure of
5 training and/or discipline, acted in an unconstitutional fashion by separating parents
6 from their newborn child without a court order, based solely on a report that the hospital
7 had unconfirmed and undifferentiated drug test results for legal amphetamines and
8 illegal methamphetamines, and without any basis to believe that the mother abused or
9 neglected her child.

10 774. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
11 evidence that Defendant Police Officers and/or their Supervisors conspired with at least
12 one Defendant Private Actor elsewhere listed in this complaint.

13 775. The conspiracy between the Defendant parties and their agents, employees, or
14 assigns violates *42 U.S.C. § 1983*.

15 776. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
16 can demonstrate by a preponderance of the evidence that Officers Andrew Keyock and
17 Thomas A. Smith violated Plaintiff Smith Family's federal rights, and that supervisor
18 Defendants Northampton County, Corporal Harryn and Chief Pancoast should be held
19 liable for conduct of subordinate Officers Andrew Keyock and Thomas A. Smith,

²⁸See, *Jordan v. City of Philadelphia*, 66 F. Supp. 2d 638, 646 (E.D. Pa. 1999) (quoting
Wendy H. v. City of Philadelphia, 849 F. Supp. 367, 372 (E.D. Pa. 1994) (quoting
Youngberg v. Romeo, 457 U.S. 307, 323 (1982))).

1 because as supervisors directed the actions in question, or had actual knowledge of the
2 violation and acquiesced to it, or with deliberate indifference to the consequences,
3 established and maintained a policy, practice or custom which directly caused the
4 violation.

5 777. All Defendant Police Officers and their Supervisors, under color of law, acting
6 through their authority as officers of the Bethlehem Police Department, by allowing a
7 state created "special relationship" to be created between St. Luke's Hospital and
8 Plaintiff Newborn baby J.A.S. violated Plaintiff's rights under the Equal Protection
9 Clause of the Fourteenth Amendment to the United States Constitution.

10 778. Plaintiffs assert the aforementioned claim is a breach of the Equal Protection
11 Clause pursuant to *42 U.S.C. § 1983*.

12 779. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
13 Defendants' conduct, including but not limited to, emotional and psychological distress,
14 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
15 requests appropriate compensatory damages to account for PTSD therapies and other
16 related treatments as they have been and will continue to be necessary; Plaintiffs
17 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

18 780. Given the substantial wealth of the Defendant Northampton County, and
19 therefore, its ability to afford the appropriate training to avoid this egregious violation of
20 the U.S. Constitution, and Defendant Northampton County through its employees,
21 agents, or assigns, Officers Andrew Keyock & Thomas A. Smith, Corporal Kirk Harryn,
22 & Chief Daniel Pancoast, had legal obligations to accurately enforce the law, and, since
23 harm was actually caused to the current Plaintiff Smith Family, and since harm is likely

1 to continue to harm future postpartum families, and because the acts of the Defendants
2 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
3 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
4 punitive damages on Defendants Northampton County, Officers Andrew Keyock &
5 Thomas A. Smith, Corporal Kirk Harryn, and Chief Daniel Pancoast to deter such
6 Defendants from committing to such conduct in the future which violates the Fourteenth
7 Amendment of the United States Constitution Plaintiffs respectfully request an amount
8 of \$1,000,000 in punitive damages per Defendants Officers Andrew Keyock and
9 Thomas A. Smith; \$5,000,000 per Defendants Corporal Kirk Harryn, and Chief Daniel
10 Pancoast; and \$10,000,000 per Defendant Northampton County.

11 781. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
12 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
13 request a nominal judgment of \$1.00.

14 **XXIV. Fourteenth Amendment**

15 **Special Relationship**

16 **Violation of Protection from State Actors Creating a Special Relationship**

17 **between a Child and a Private Entity Without Sufficient Cause**

18 **Smith, et al. v. Monroe County, Ms. Adelaide. W. Grace, & Mr. Tim Shaw**

19 782. When a state actor, acting under color of law, without a court order, allows a
20 private entity to separate a parent from their newborn child without probable cause then
21 a special relationship of care between the private entity and the child arises.

1 783. The special relationship between the private entity and the child, as assented to
2 by a state actor, gives rise to duties under the Fourteenth Amendment to the United
3 States Constitution.

4 784. In order to establish a claim Plaintiffs must prove that (1) each Defendant CYS
5 Employee and their Supervisors each individually acted with deliberate indifference
6 when they allowed Plaintiff Newborn baby J.A.S. to be detained by St. Luke's Hospital
7 without consent and against the wishes of the Plaintiff parents; and, (2) Plaintiffs were
8 harmed by that detainment.

9 785. Upon information and belief, Plaintiffs Mr. and Mrs. Smith allege that all
10 Defendant CYS Employees and their Supervisors violated their duty to prevent a
11 formation of a special relationship between St. Luke's Hospital and Plaintiff Newborn
12 baby J.A.S. when they condoned St. Luke's Hospital's actions by allowing St. Luke's
13 Hospital to have uncontested control of Plaintiff Newborn baby J.A.S. for a period
14 lasting more than 24-hours.

15 786. Plaintiffs Mr. and Mrs. Smith allege under information and belief that do to the
16 fact Defendant had a court order or found probable cause that a crime was being
17 committed, had a duty to prevent the formation of a special relationship between St.
18 Luke's Hospital and Plaintiff Newborn baby J.A.S., and instead had an affirmative duty
19 to reaffirm the parent's right to St. Luke's Hospital that Plaintiffs Mr. and Mrs. Smith
20 should be with their newborn child.

21 787. By not reaffirming the parent's request to withdrawal consent for Plaintiff
22 Newborn baby J.A.S. and to reunite parents with their child, Defendant Monroe County
23 through its Office of Children and Youth Services, and all relevant Defendant CYS

1 Employees and their Supervisors acted with deliberate indifference to the welfare of
2 Plaintiffs Newborn baby J.A.S. and Mr. and Mrs. Smith.

3 788. All Defendant CYS Employees and their Supervisors knew or should have known
4 that by agreeing to St. Luke's Hospital's demands to remove Plaintiffs Mr. and Mrs.
5 Smith from St. Luke's Hospital property without Plaintiff Newborn baby J.A.S. that
6 Newborn baby J.A.S. would be submitted to a sterile, unwelcoming environment,
7 needlesticks, various testing, time away from both parents shortly after birth, time away
8 from both parents shortly after birth including time for skin-to-skin contact, time away
9 from his mother during first few days of breastfeeding, and various treatments done to
10 Plaintiff Newborn baby J.A.S. against the consent and will of Plaintiffs Mr. and Mrs.
11 Smith.

12 789. The actions of all Defendant CYS Employees and their Supervisors also "shock
13 the conscience" because of the degree to which it was clear that failure to act on behalf
14 of the parents to be with their child would have shocking, traumatic, and far-reaching
15 consequences.²⁹

16 790. In the alternative, the actions of each Defendant CYS Employee and their
17 Supervisors fail a professional judgement standard because their actions were such a
18 substantial departure from accepted professional judgement, practice, or standards as
19 to demonstrate that each Defendant CYS Employee and their Supervisors did not
20 actually base their decisions on professional judgement.

21 791. Upon information and belief, all Defendant CYS Employees and their Supervisors
22 by virtue of custom, pattern, practice, policy, lack of supervision and/or failure of training

²⁹See Footnote 14.

1 and/or discipline, acted in an unconstitutional fashion by separating parents from their
2 newborn child without a court order, based solely on a report that the hospital had
3 unconfirmed and undifferentiated drug test results for legal amphetamines and illegal
4 methamphetamines, and without any basis to believe that the mother abused or
5 neglected her child.

6 792. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
7 evidence that Defendant State Actors conspired with at least one Defendant Private
8 Actor elsewhere listed in this complaint.

9 793. The conspiracy between the Defendant parties and their agents, employees, or
10 assigns violates *42 U.S.C. § 1983*.

11 794. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
12 can demonstrate by a preponderance of the evidence that Mr. Tim Shaw violated
13 Plaintiff Smith Family's federal rights, and that supervisor Defendant Ms. Adelaide W.
14 Grace should be held liable for conduct of subordinate Defendant Mr. Tim Shaw,
15 because as supervisor directed the actions in question, or had actual knowledge of the
16 violation and acquiesced to it, or with deliberate indifference to the consequences,
17 established and maintained a policy, practice or custom which directly caused the
18 violation.

19 795. Each Defendant CYS Employee and their Supervisors, under color of law, acting
20 through the Monroe County Office of Children and Youth Services, by allowing a state
21 created "special relationship" to be created between St. Luke's Hospital and Plaintiff
22 Newborn baby J.A.S. violated Plaintiffs' rights under the Equal Protection Clause of the
23 Fourteenth Amendment to the United States Constitution.

1 796. Plaintiffs' assert the aforementioned claim of a breach of the Equal Protection
2 Clause pursuant to *42 U.S.C. § 1983*.

3 797. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
4 Defendants' conduct, including but not limited to, emotional and psychological distress,
5 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
6 requests appropriate compensatory damages to account for PTSD therapies and other
7 related treatments as they have been and will continue to be necessary; Plaintiffs
8 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

9 798. Given the substantial wealth of the Defendant Monroe County, and therefore, its
10 ability to afford the appropriate training to avoid this egregious violation of the U.S.
11 Constitution, and Defendant Monroe County through its employees, agents, or assigns,
12 Defendants Ms. Adelaide W. Grace and Mr. Tim Shaw , had legal obligations to
13 accurately enforce the law, and, since harm was actually caused to the current Plaintiff
14 Smith Family, and since harm is likely to continue to harm future postpartum families,
15 and because the acts of the Defendants and their agents, assigns, or employees
16 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the
17 Plaintiffs respectfully request the imposition of punitive damages on Defendants Monroe
18 County, Ms. Adelaide W. Grace and Mr. Tim Shaw to deter such Defendants from
19 committing to such conduct in the future which violates the Fourteenth Amendment of
20 the United States Constitution Plaintiffs respectfully request an amount of \$1,000,000 in
21 punitive damages per Defendant Mr. Tim Shaw; \$5,000,000 per Defendant Ms.
22 Adelaide. W. Grace; and \$10,000,000 per Defendant Monroe County.

799. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXV. Fourteenth Amendment

Special Relationship

Violation of Protection from Private Actors Creating a Special Relationship

between a Child and a Private Entity, Without Sufficient Cause

Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA PA, Ms. Teresa

Marlino, MD, Ms. Cynthia M. Shultz, MD, & Mr. Jerry Hric, MD

800. When a private actor, acting under color of law, without a court order, separates a parent from their newborn child without probable cause then a special relationship of care between the private entity the actor represents and the child arises.

801. The special relationship between the private entity and the child, as assented to by the private actor, acting under color of law, gives rise to duties under the Fourteenth Amendment to the United States Constitution.

802. In order to establish a claim Plaintiffs must prove that (1) each listed Defendant separately acted with deliberate indifference when they allowed Plaintiff Newborn baby J.A.S. to be detained by Defendant St. Luke's Hospital without consent and against the wishes of the parents; and, (2) Plaintiffs were harmed by that detainment.

803. Upon information and belief, Plaintiffs Mr. and Mrs. Smith allege that each Defendant violated their duty to prevent a formation of a special relationship between

1 the Defendant St. Luke's Hospital and Plaintiff Newborn baby J.A.S. when it concerted
2 St. Luke's Hospital's actions to separate Plaintiffs Mr. and Mrs. Smith from Plaintiff
3 Newborn baby J.A.S. under threat of arrest.

4 804. Plaintiffs Mr. and Mrs. Smith allege under information and belief that do to the
5 fact that no Defendant obtained a court order or found probable cause that a crime was
6 being committed, had a duty to prevent the formation of a special relationship between
7 Defendant St. Luke's Hospital and Plaintiff Newborn baby J.A.S. which it did not fulfill,
8 and instead had an affirmative duty to reaffirm the parent's right to the Defendant
9 Private Actor St. Luke's Hospital that Plaintiffs Mr. and Mrs. Smith should be with their
10 newborn child.

11 805. By not reaffirming the parent's request to withdrawal consent for Plaintiff
12 Newborn baby J.A.S. and to reunite parents with their child, Defendant St. Luke's
13 Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, and Ms. Cynthia M. Shultz,
14 MD, acted with deliberate indifference to the welfare of Plaintiffs Newborn baby J.A.S.
15 and Mr. and Mrs. Smith.

16 806. Each Private Defendant knew or should have known that by creating and/or
17 orchestrating Defendant St. Luke's Hospital's demands to remove Plaintiffs Mr. and
18 Mrs. Smith from Defendant St. Luke's Hospital's property without Plaintiff Newborn baby
19 J.A.S., that Newborn baby J.A.S. would be submitted to a sterile, unwelcoming
20 environment, needlesticks, various testing, time away from both parents shortly after
21 birth, time away from both parents shortly after birth including time for skin-to-skin
22 contact, time away from mother during first few days of breastfeeding, and various

1 treatments done to Plaintiff Newborn baby J.A.S. against the consent and will of
2 Plaintiffs Mr. and Mrs. Smith.

3 807. The actions of each Defendant, “shock the conscience” because of the degree to
4 which it was clear that failure to act on behalf of the parents to be with their child would
5 have shocking, traumatic, and far-reaching consequences.³⁰

6 808. In the alternative, the actions of each Defendant fails a professional judgement
7 standard because their actions were such a substantial departure from accepted
8 professional judgement, practice, or standards as to demonstrate that each Defendant
9 did not actually base its decisions on professional judgement.

10 809. Upon information and belief, each Private Defendant by virtue of custom, pattern,
11 practice, policy, lack of supervision and/or failure of training and/or discipline, acted in
12 an unconstitutional fashion by separating parents from their newborn child without a
13 court order, based solely on a report that the hospital had unconfirmed and
14 undifferentiated drug test results for legal amphetamines and illegal
15 methamphetamines, and without any basis to believe that the mother abused or
16 neglected her child.

17 810. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
18 can demonstrate by a preponderance of the evidence that St. Luke’s Hospital, & OBHG
19 PA, agents, employees, and/or assigns violated Plaintiff Smith Family’s federal rights,
20 and that each Defendant Supervisor listed in this allegation, should be held liable for
21 conduct of subordinate St. Luke’s Hospital, and OBHG PA’s agents, employees, and/or
22 assigns, because as supervisors directed the actions in question, or had actual

³⁰See Footnote 14.

1 knowledge of the violation and acquiesced to it, or with deliberate indifference to the
2 consequences, established and maintained a policy, practice or custom which directly
3 caused the violation.

4 811. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
5 can demonstrate by a preponderance of the evidence that Onsite Neonatal, through its
6 agents, employees, and/or assigns violated Plaintiff Smith Family's federal rights, and
7 that supervisor Defendant Mr. Jerry Hric, MD, should be held liable for conduct of
8 subordinates Ms. Teresa Marlino, MD and Ms. Cynthia Shultz, MD and any other Onsite
9 Neonatal agents, employees, and/or assigns, because as supervisor directed the
10 actions in question, or had actual knowledge of the violation and acquiesced to it, or
11 with deliberate indifference to the consequences, established and maintained a policy,
12 practice or custom which directly caused the violation.

13 812. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
14 evidence that each Defendant Private Actor conspired with at least one Defendant State
15 Actor elsewhere listed in this complaint.

16 813. The conspiracy between the Defendant parties and their agents, employees, or
17 assigns violates *42 U.S.C. § 1983*.

18 814. Each Defendant, under color of law, acting as or through St. Luke's Hospital,
19 Onsite Neonatal, and OBHG PA, by allowing a state created "special relationship" to be
20 created between private Defendant St. Luke's Hospital and Plaintiff Newborn baby
21 J.A.S. violated Plaintiffs' rights under the Equal Protection Clause of the Fourteenth
22 Amendment to the United States Constitution.

1 815. Plaintiffs assert the aforementioned claim of a breach of the Equal Protection
2 Clause pursuant to *42 U.S.C. § 1983*.

3 816. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
4 conduct, including but not limited to, emotional and psychological distress, pain and
5 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
6 appropriate compensatory damages to account for PTSD therapies and other related
7 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
8 request an amount of \$84,800 in compensatory damages per Defendant.

9 817. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
10 Neonatal, OBHG PA, , Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, and Mr.
11 Jerry Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
12 egregious violation of the U.S. Constitution, and, since harm was actually caused to the
13 current Plaintiff Smith Family, and since harm is likely to continue to harm future
14 postpartum families, and because the acts of the Defendants and their agents, assigns,
15 or employees callously disregarded the Plaintiff's rights in a reckless and wanton
16 manner, the Plaintiffs respectfully request the imposition of punitive damages on
17 Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD,
18 Ms. Cynthia M. Shultz, MD, and Mr. Jerry Hric, MD, to deter such Defendants from
19 committing to such conduct in the future which violates the Fourteenth Amendment of
20 the United States Constitution Plaintiffs respectfully request an amount of \$1,000,000 in
21 punitive damages per Defendant Mr. Jerry Hric, MD; and \$10,000,000 per Defendants
22 St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms.
23 Cynthia M. Shultz, MD.

1 818. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
2 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
3 request a nominal judgment of \$1.00.

4 **XXVI. Fourteenth Amendment**

5 **Special Relationship**

6 **Violation of Protection from State & Private Actors Creating a Special**
7 **Relationship between a Child and a Private Entity, Without Sufficient Cause**

8 **Smith, et al. v. Anderson Labs & Ms. Emily Miller, MD**

9 819. Defendant Anderson Labs acting through its agents, employees, and/or assigns;
10 and, St. Luke's Hospital acting through its agents, employees, and/or assigns, acted in
11 concert with one another, followed a practice, and/or entered into an agreement or
12 understanding to violate Plaintiffs Mr. and Mrs. Smith's and Newborn baby J.A.S.'s
13 Fourteenth Amendment substantive due process right to be free of the unnecessary
14 creation of a "special relationship" between Defendant St. Luke's Hospital and Plaintiff
15 Newborn baby J.A.S.

16 820. When a private entity, acting under color of law, without a court order, separates
17 a parent from their newborn child without probable cause then a special relationship of
18 care between the private entity and the child arises.

19 821. The special relationship between the private entity and the child, as assented to
20 by Anderson Labs, acting under color of law, gives rise to duties under the Fourteenth
21 Amendment to the United States Constitution.

1 822. In order to establish a claim Plaintiffs must prove that (1) Defendant Anderson
2 Labs and its agents, employees, assigns, and/or supervisors, acted with deliberate
3 indifference when they allowed Plaintiff Newborn baby J.A.S. to be detained by agents,
4 employees, and/or assigns, of Defendant St. Luke's Hospital without consent and
5 against the wishes of the parents; and, (2) Plaintiffs were harmed by that detainment.

6 823. Upon information and belief, Plaintiffs Mr. and Mrs. Smith allege that Defendant
7 Anderson Labs and its agents, employees, assigns, and/or supervisors violated its duty
8 to prevent a formation of a special relationship between the itself and newborn baby
9 J.A.S. when it endorsed and/or concerted Defendant St. Luke's Hospitals agents,
10 employees, and/or assigns, actions to separate Plaintiffs Mr. and Mrs. Smith from
11 Newborn baby J.A.S.

12 824. Plaintiffs Mr. and Mrs. Smith allege under information and belief that the
13 Defendant Anderson Labs and its agents, employees, assigns, and/or supervisors, did
14 use substance abuse tests that did not distinguish between legal amphetamines and
15 illegal methamphetamines, which it knew or should have known, would have been
16 reported to Defendant St. Luke's Hospital to be used for reasons beyond medical
17 purposes.

18 825. Defendant Anderson Labs and its agents, employees, assigns, and/or
19 supervisors had a duty to prevent the formation of a special relationship between
20 Defendant St. Luke's Hospital and Plaintiff Newborn baby J.A.S. which they did not
21 fulfill, and instead, had an affirmative duty to use testing that distinguishes between
22 legal amphetamines and illegal methamphetamines.

1 826. By not use testing that distinguishes between legal amphetamines and illegal
2 methamphetamines, Defendant Anderson Labs and its agents, employees, assigns,
3 and/or supervisors acted with deliberate indifference to the welfare of Plaintiffs newborn
4 baby J.A.S. and Mr. and Mrs. Smith.

5 827. Defendant Anderson Labs and its agents, employees, assigns, and/or
6 supervisors knew or should have known that by approving and/or orchestrating with St.
7 Luke's agents, employees, and/or assigns demands to use testing that does not
8 distinguish between legal amphetamines and illegal methamphetamines that newborn
9 baby J.A.S. would be submitted to a sterile, unwelcoming environment, needlesticks,
10 various testing, time away from both parents shortly after birth including time for skin-to-
11 skin contact, time away from both parents shortly after birth, time away from mother
12 during first few days of breastfeeding, and various treatments done to Plaintiff Newborn
13 baby J.A.S. against the consent and will of Plaintiffs Mr. and Mrs. Smith.

14 828. The actions of Anderson Labs and its agents, employees, assigns, and/or
15 supervisors also "shock the conscience" because of the degree to which it was clear
16 that failure to use testing that distinguishes between legal amphetamines and illegal
17 methamphetamines would have shocking, traumatic, and far-reaching consequences
18 for the people being tested.³¹

19 829. In the alternative, the actions of Defendant Anderson Labs and its agents,
20 employees, assigns, and/or supervisors fail a professional judgement standard because
21 its actions were such a substantial departure from accepted professional judgement,

³¹See Footnote 14.

1 practice, or standards as to demonstrate that the Defendant Anderson Labs did not
2 actually base its decisions on professional judgement.

3 830. Upon information and belief, Defendant Anderson Labs and its agents,
4 employees, assigns, and/or supervisors by virtue of custom, pattern, practice, policy,
5 lack of supervision and/or failure of training and/or discipline, acted in an
6 unconstitutional fashion by helping to form the basis to prosecute Plaintiffs Mr. & Mrs.
7 Smith by separating parents from their newborn baby without a court order, based
8 solely on a report that the hospital had unconfirmed and undifferentiated drug test
9 results for legal amphetamines and illegal methamphetamines, which were rendered by
10 Defendant Anderson Labs and its agents, employees, or assigns.

11 831. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
12 evidence that the Defendant Private Entity Anderson Labs, its agents, employees,
13 and/or assigns conspired with at least one Defendant Actor elsewhere listed in this
14 complaint.

15 832. The conspiracy between the Defendant parties and their agents, employees, or
16 assigns violates *42 U.S.C. § 1983*.

17 833. Defendant Anderson Labs and its agents, employees, assigns, and/or
18 supervisors, by giving undifferentiated and harmful test results that were intended to be
19 relied on by medical providers, and/or other related staff, acting through its agents,
20 employees and/or assigns, acting under color of law, by allowing a state created
21 “special relationship” to be created between private Defendant St. Luke’s and Plaintiff
22 Newborn baby J.A.S. violated Plaintiffs’ rights under the Equal Protection Clause of the
23 Fourteenth Amendment to the United States Constitution.

1 834. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
2 can demonstrate by a preponderance of the evidence that Anderson Labs, and its
3 agents, employees, assigns, and/or supervisors violated Plaintiff Smith Family's federal
4 rights, and that supervisor Defendant Ms. Emily Miller, MD, should be held liable for
5 conduct of subordinate Anderson Labs and its agents, employees, and/or assigns,
6 because as supervisor directed the actions in question, or had actual knowledge of the
7 violation and acquiesced to it, or with deliberate indifference to the consequences,
8 established and maintained a policy, practice or custom which directly caused the
9 violation.

10 835. Plaintiffs' assert the aforementioned claim of a breach of the Equal Protection
11 Clause pursuant to 42 U.S.C. § 1983.

12 836. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
13 conduct, including but not limited to, emotional and psychological distress, pain and
14 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
15 appropriate compensatory damages to account for PTSD therapies and other related
16 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
17 request an amount of \$84,800 in compensatory damages per Defendant.

18 837. Given the substantial wealth of the Defendants Anderson Labs and Ms. Emily
19 Miller, MD, and therefore, their ability to afford the appropriate training to avoid this
20 egregious violation of the U.S. Constitution, and, since harm was actually caused to the
21 current Plaintiff Smith Family, and since harm is likely to continue to harm future
22 postpartum families, and because the acts of the Defendants and their agents, assigns,
23 or employees callously disregarded the Plaintiff's rights in a reckless and wanton

manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants Anderson Labs and Ms. Emily Miller, MD, to deter such Defendants from committing to such conduct in the future which violates the Fourteenth Amendment of the United States Constitution Plaintiffs respectfully request an amount of \$5,000,000 in punitive damages per Defendants Anderson Labs and Ms. Emily Miller, MD.

838. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXVII. Fourteenth Amendment

Equal Protection

Right to be Free from Discrimination Based on One's Sex

Mrs. Grace Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology Associates, Monroe County, Ms. Adelaide W. Grace, & Mr. Tim Shaw

839. Upon information and belief, Defendant St. Luke's entered into an agreement, or understanding with Defendant Monroe County CYS to violate Plaintiff Mrs. Grace Smith's right to equal protection under the Fourteenth Amendment to the United State Constitution.

840. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology Associates and Monroe County, through its Office of Child and Youth Services, Ms.

1 Adelaide W. Grace and Mr. Tim Shaw each acted in concert with one another and in
2 furtherance of the agreement or understanding that Plaintiff Mrs. Smith would be
3 subjected to drug testing, but Mr. Smith or other similarly situated males would not be
4 tested for the same substances.

5 841. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
6 Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
7 Associates and Monroe County, through its Office of Child and Youth Services, Ms.
8 Adelaide W. Grace and Mr. Tim Shaw had a custom, pattern, policy or practice of
9 collecting information from new mothers regarding their prior drug use, but had no such
10 custom, pattern, policy or practice of collecting such information about prior drug use by
11 these women's male partners or other similarly situated men within the Smith
12 household, such as, men likely to have custody or visitation of a newborn or very young
13 child.

14 842. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
15 Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
16 Associates and Monroe County, through its Office of Child and Youth Services, Ms.
17 Adelaide W. Grace and Mr. Tim Shaw had a custom, pattern, policy or practice of
18 collecting and drug testing the urine, blood, and tissues of new mothers but had no
19 custom, pattern, policy or practice of collecting and drug testing the urine, blood, or
20 tissues of these women's male partners or other similarly situated men.

21 843. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
22 Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
23 Associates had a custom, pattern, policy or practice of reporting to Children and Youth

1 agencies, for new mothers, but did not have any similar custom, pattern, policy or
2 practice of reporting such drug test results use of these women's male partners or other
3 similarly situated men.

4 844. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
5 Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
6 Associates reported new mothers' confidential medical information to Children and
7 Youth as a policy or practice, and Northampton County Children and Youth Services,
8 and Monroe County CYS in this particular instance, with the understanding and intent
9 that one of the two Children and Youth agencies would use this information to conduct
10 child abuse investigations into these new mothers, and Plaintiff Mrs. Grace Smith in this
11 instance.

12 845. Monroe County CYS had a policy and practice of accepting and acting on
13 confidential information it received from Defendants St. Luke's Hospital, Onsite
14 Neonatal, OBHG PA, St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's
15 Obstetrics and Gynecology Associates, knowing that the information was being
16 collected only from new mothers and was not being collected from Mr. Smith or other
17 similarly situated men.

18 846. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
19 Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
20 Associates, and Monroe County understood and intended those new mothers, but not
21 similarly situated men, would be investigated for abusing or neglecting the children
22 under their care based exclusively on unconfirmed and undifferentiated drug test results
23 for legal amphetamines and illegal methamphetamines.

1 847. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
2 Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
3 Associates, Monroe County CYS, Ms. Adelaide W. Grace, and Mr. Tim Shaw intended
4 to subject new mothers, but not similarly situated men, to unwarranted highly invasive,
5 burdensome, humiliating, and/or unconstitutional child abuse or child neglect
6 investigations based exclusively on unconfirmed and undifferentiated drug test results
7 between legal amphetamines and illegal methamphetamines, without any basis to
8 suspect or believe that Newborn baby J.A.S. had been affected by illegal substance
9 abuse or was having withdrawal symptoms resulting from prenatal drug exposure.

10 848. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
11 can demonstrate by a preponderance of the evidence that Mr. Tim Shaw violated
12 Plaintiff Smith Family's federal rights, and that supervisor Defendant Ms. Adelaide W.
13 Grace should be held liable for conduct of subordinate Defendant Mr. Tim Shaw,
14 because as supervisor directed the actions in question, or had actual knowledge of the
15 violation and acquiesced to it, or with deliberate indifference to the consequences,
16 established and maintained a policy, practice or custom which directly caused the
17 violation.

18 849. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
19 Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
20 Associates, Monroe County, Ms. Adelaide W. Grace, and Mr. Tim Shaw, violated
21 Plaintiff's rights under the Equal Protection Clause of the Fourteenth Amendment to the
22 United States Constitution.

1 850. The conspiracy between the Defendant parties and their agents, employees, or
2 assigns violates *42 U.S.C. § 1983*.

3 851. Plaintiff asserts the aforementioned claim of a breach of the Equal Protection
4 Clause pursuant to *42 U.S.C. § 1983*.

5 852. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
6 Defendants' conduct, including but not limited to, emotional and psychological distress,
7 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
8 requests appropriate compensatory damages to account for PTSD therapies and other
9 related treatments as they have been and will continue to be necessary; Plaintiff
10 respectfully requests an amount of \$59,500 in compensatory damages per Defendant.

11 853. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
12 Neonatal, OBHG PA PA, St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's
13 Obstetrics and Gynecology Associates, and therefore, its ability to afford the appropriate
14 training to avoid this egregious violation of the U.S. Constitution, and Defendant Monroe
15 County through its employees, agents, or assigns, Ms. Adelaide W. Grace, and Mr. Tim
16 Shaw, had legal obligations to accurately enforce the law, and, since harm was actually
17 caused to the current Plaintiff Mrs. Smith, and since harm is likely to continue to harm
18 future postpartum families, and because the acts of the Defendants and their agents,
19 assigns, or employees callously disregarded the Plaintiff's rights in a reckless and
20 wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on
21 Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physician's
22 Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology Associates, Monroe
23 County, Ms. Adelaide W. Grace, and Mr. Tim Shaw to deter such Defendants from

committing to such conduct in the future which violates the Fourteenth Amendment of the United States Constitution Plaintiff respectfully requests an amount of \$1,000,000 in punitive damages per Defendant Mr. Tim Shaw; \$5,000,000 per Defendants Onsite Neonatal, OBHG PA, St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology Associates, and Ms. Adelaide W. Grace; and \$10,000,000 per Defendants St. Luke's Hospital, and Monroe County.

854. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXVIII. Fourteenth Amendment

Equal Protection

Right to be Free from Discrimination Based on One's Sex

Mrs. Grace Smith v. St. Luke's Hospital, "Security Guard 'Freddy'", "Security Guard 'Joe'", "Security Guard 'Nate'", "Security Guard(s) 'Unknown'", "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, & the "Hospital Leadership Team"

855. Upon information and belief Defendants St. Luke's Hospital, "Security Guard 'Freddy'", "Security Guard 'Joe'", "Security Guard 'Nate'", "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

1 violated Plaintiff Mrs. Grace Smith's right to equal protection under the Fourteenth
2 Amendment to the United States Constitution.

3 856. Defendant St. Luke's Hospital had a custom, pattern, policy or practice of
4 guarding new mothers suspected of illegal drug use, but did not have a custom, pattern,
5 policy, or practice to ensure female security guards are the ones who guard
6 breastfeeding female mothers.

7 857. Only a curtain separated Plaintiff Mrs. Smith from guards, whom Mrs. Smith
8 regarded as male, from her presence while breastfeeding Newborn baby J.A.S.

9 858. Defendants "Security Guard 'Freddy'", "Security Guard 'Joe'", and "Security
10 Guard 'Nate'", had knowledge that Plaintiff Mrs. Smith was breastfeeding Newborn baby
11 J.A.S., and on numerous occasions, without cause, and without permission of Plaintiff
12 Mrs. Smith, physically invaded the private sanctum of a breastfeeding mother with
13 random insertions of self and voyeuristic observations into Newborn baby J.A.S.'s NICU
14 unit.

15 859. Upon information and belief, Defendant St. Luke's Hospital did not at any time
16 provide the mother, Mrs. Smith, with a guard who self-identifies as female or who is
17 chromosomally female.

18 860. Defendant male guards, in acts of humiliation, even followed Plaintiff Mrs. Smith
19 to and from the restroom, and at no time did a female guard follow Plaintiff Mrs. Smith to
20 the restroom in lieu of a male guard.

21 861. Plaintiff Mrs. Smith was not able to voice her objections to only male guards
22 being present because Plaintiff Mrs. Smith was afraid that Defendant St. Luke's Hospital
23 would have viewed questioning any of Defendant St. Luke's Hospital's actions as an

1 affront to their care and would have once again ejected her from the premises without
2 Newborn baby J.A.S. as had already happened to her already previously the same
3 weekend.

4 862. Upon information and belief, all Defendants intended to subject new mothers to
5 unwarranted, highly invasive, burdensome, humiliating, and/or restrictive actions based
6 exclusively on unconfirmed and undifferentiated drug test results for legal
7 amphetamines and illegal methamphetamines, without any basis to suspect or believe
8 that Newborn baby J.A.S. had been affected by illegal substance abuse or was having
9 withdrawal symptoms resulting from prenatal drug exposure.

10 863. Upon information and belief, Defendants St. Luke's Hospital, "Security Guard
11 'Freddy'", "Security Guard 'Joe'", "Security Guard 'Nate'", "Security Supervisor
12 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert
13 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
14 by virtue of custom, pattern, practice, policy, lack of supervision and/or failure of training
15 and/or discipline, acted in an unconstitutional fashion by placing Defendant Mrs. Smith
16 under 24-hour male guard without a court order, and based solely on a report that the
17 hospital had unconfirmed and undifferentiated drug test results between legal
18 amphetamines and illegal methamphetamines, and without any reasonable basis to
19 believe that the mother abused or neglected her child.

20 864. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
21 can demonstrate by a preponderance of the evidence that Defendants , "Security Guard
22 'Freddy'", "Security Guard 'Joe'", and "Security Guard 'Nate'", violated Plaintiff Smith
23 Family's federal rights, and that supervisor Defendants "Security Supervisor 'Unknown'",

1 “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
2 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”, should
3 be held liable for conduct of subordinates “Security Guard ‘Freddy’”, “Security Guard
4 ‘Joe’”, and “Security Guard ‘Nate’”, because as supervisors directed the actions in
5 question, or had actual knowledge of the violation and acquiesced to it, or with
6 deliberate indifference to the consequences, established and maintained a policy,
7 practice or custom which directly caused the violation.

8 865. Defendants St. Luke’s Hospital, “Security Guard ‘Freddy’”, “Security Guard ‘Joe’”,
9 “Security Guard ‘Nate’”, “Security Supervisor ‘Unknown’”, “Head of Hospital Security
10 ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
11 Dawn Hoffman, and the “Hospital Leadership Team”, violated Plaintiff’s rights under the
12 Equal Protection Clause of the Fourteenth Amendment to the United States
13 Constitution.

14 866. Plaintiff asserts the aforementioned claim of a breach of the Equal Protection
15 Clause pursuant to *42 U.S.C. § 1983*.

16 867. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
17 Defendants’ conduct, including but not limited to, emotional and psychological distress,
18 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
19 requests appropriate compensatory damages to account for PTSD therapies and other
20 related treatments as they have been and will continue to be necessary; Plaintiff
21 respectfully requests an amount of \$59,500 in compensatory damages per Defendant.

22 868. Given the substantial wealth of the Defendants St. Luke’s Hospital, “Head of
23 Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.

1 Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”, and therefore, its
2 ability to afford the appropriate training to avoid this egregious violation of the U.S.
3 Constitution, and, since harm was actually caused to the current Plaintiff Mrs. Smith,
4 and since harm is likely to continue to harm future postpartum families, and because the
5 acts of the Defendants and their agents, assigns, or employees callously disregarded
6 the Plaintiff’s rights in a reckless and wanton manner, the Plaintiff respectfully requests
7 the imposition of punitive damages on Defendants St. Luke’s Hospital, ”, “Head of
8 Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
9 Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team” to deter such
10 Defendants from committing to such conduct in the future which violates the Fourteenth
11 Amendment of the United States Constitution Plaintiff respectfully requests an amount
12 of \$500,000 in punitive damages per Defendants “Security Guard ‘Freddy’”, “Security
13 Guard ‘Joe’”, “Security Guard ‘Nate’”, and “Security Guard(s) ‘Unknown’”; \$1,000,000
14 per Defendants “Security Supervisor ‘Unknown’”, and “Head of Hospital Security
15 ‘Unknown’”; \$5,000,000 per Defendants Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
16 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”; and
17 \$10,000,000 per Defendant St. Luke’s Hospital.

18 869. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered
19 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
20 request a nominal judgment of \$1.00.

21 **XXIX. 42 U.S.C. § 1983**

22 **Liability in Connection with Another**

Failure to Intervene

Smith, et al. v. Northampton County, Bethlehem Township, Officers Andrew

Keyock and Thomas A. Smith, Corporal Kirk Harryn, & Chief Daniel G. Pancoast

870. Upon information and belief, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. allege that doctors Teresa Marino, MD and Cynthia M. Shultz, MD, while acting as an agent, employee, or assign of St. Luke's Hospital violated Plaintiff's Fourth and Fourteenth Amendments to the United States Constitution, and Defendant Officers Andrew Keyock and Thomas A. Smith should be held liable for the violations of doctors Ms. Teresa Marino, MD and Ms. Cynthia Shultz, MD because Defendant Officers Keyock and Smith failed to intervene to stop violations to the Plaintiff Smith Family's federal constitutional and rights.

871. In order to demonstrate the defendant state actors' culpability Plaintiffs must prove the following by a preponderance of the evidence: (1) a third party violated a plaintiff's federal rights; (2) defendant state actors had a duty to intervene to prevent a violation of plaintiff's federal rights by that third party; (3) the defendant state actors had a reasonable opportunity to intervene; and, (4) the defendant state actors failed to intervene.

872. Upon information and belief, Defendant third party doctors Ms. Teresa Marlino, MD and Ms. Cynthia Shultz, MD, while in the course and process separating a newborn baby child from its parents without a court order or probable cause of abuse, violated Plaintiffs Fourth, and Fourteenth Amendment rights.

1 873. Upon information and belief, Defendant Officers Andrew Keyock and Thomas A.
2 Smith observed Plaintiff Smith Families' constitutional rights being violated and had a
3 duty to intervene with doctors Teresa Marlino, MD and Cynthia A. Shultz, MD to prevent
4 Plaintiff Smith Families' constitutional rights from being further violated.

5 874. Upon information and belief, Defendant Officers Andrew Keyock and Thomas A.
6 Smith, by conferencing with doctors and other St. Luke's Hospital staff and by allowing
7 the encounter between the Smith's, Officers, and St. Luke's Hospital Staff to last as long
8 as the Defendant Officers desired, had ample reasonable opportunity to intervene in the
9 actions of Defendant third party doctors Ms. Teresa Marlino, MD, and, Ms. Cynthia
10 Shultz, MD.

11 875. Upon information and belief, Defendant Officers affirmed the decision of St.
12 Luke's Hospital to separate Plaintiff Newborn baby J.A.S. from his parents Plaintiffs Mr.
13 and Mrs. Smith and escorted Mr. and Mrs. Smith under armed guard from St. Luke's
14 Hospital under threat of arrest, thereby demonstrating Defendant Officers Andrew
15 Keyock and Thomas A. Smith did not intervene on behalf of the Plaintiffs.

16 876. Therefore, upon information and belief, all of the elements of a Failure to
17 Intervene claim can be legally met and Defendant Officers Andrew Keyock and Thomas
18 A. Smith should be liable for not acting on Plaintiff Smith Families' behalf when the
19 Defendant Officers observed Defendant doctors Teresa Marlino, MD and Cynthia A.
20 Shultz, MD violating Plaintiffs' constitutional rights.

21 877. Defendant Officers Andrew Keyock and Thomas A. Smith, acted by virtue of a
22 custom, pattern, practice, policy, and/or failure to appropriately train and/or discipline,
23 acquiesced in and/or has otherwise authorized other police officers to violate citizens'

1 rights as protected by the United States Constitution by allowing unwarranted, highly
2 intrusive, humiliating, and coercive child abuse investigations into new mothers and
3 their families.

4 878. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
5 can demonstrate by a preponderance of the evidence that Officers Andrew Keyock and
6 Thomas A. Smith, violated the Plaintiff Smith Family's federal rights, and that supervisor
7 Defendants Corporal Harryn, and Chief Pancoast should be held liable for conduct of
8 subordinates Defendant Officers Andrew Keyock and Thomas A. Smith, because as
9 their supervisors directed the actions in question, or had actual knowledge of the
10 violation and acquiesced to it, or with deliberate indifference to the consequences,
11 established and maintained a policy, practice or custom which directly caused the
12 violation.

13 879. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
14 evidence that Defendant State Actors conspired with at least one Defendant Private
15 Actor elsewhere listed in this complaint.

16 880. The conspiracy between the Defendant parties and their agents, employees, or
17 assigns violates *42 U.S.C. § 1983*.

18 881. Defendants Northampton County and/or Bethlehem Township, through the
19 actions of its Defendant Officers Andrew Keyock, Thomas A. Smith, Corporal Kirk
20 Harryn, and Chief Daniel G. Pancoast of the Bethlehem Police Department, violated
21 Plaintiff's rights.

22 882. Plaintiffs assert these claims pursuant to *42 U.S.C. § 1983*.

1 883. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
2 Defendants' conduct, including but not limited to, emotional and psychological distress,
3 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
4 requests appropriate compensatory damages to account for PTSD therapies and other
5 related treatments as they have been and will continue to be necessary; Plaintiffs
6 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

7 884. Given the substantial wealth of the Defendants Northampton County and
8 Bethlehem Township, and therefore, their ability to afford the appropriate training to
9 avoid this egregious violation of the U.S. Constitution, and Defendant Northampton
10 County through its employees, agents, or assigns, Officers Andrew Keyock & Thomas
11 A. Smith, Corporal Kirk Harryn, & Chief Daniel Pancoast, had legal obligations to
12 accurately enforce the law, and, since harm was actually caused to the current Plaintiff
13 Smith Family, and since harm is likely to continue to harm future postpartum families,
14 and because the acts of the Defendants and their agents, assigns, or employees
15 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the
16 Plaintiffs respectfully request the imposition of punitive damages on Defendants
17 Northampton County, and Bethlehem Township, and Officers Andrew Keyock &
18 Thomas A. Smith, Corporal Kirk Harryn, and Chief Daniel Pancoast to deter such
19 Defendants from committing to such conduct in the future which violates the Fourteenth
20 Amendment of the United States Constitution Plaintiffs respectfully request an amount
21 of \$1,000,000 in punitive damages per Defendants Officer Andrew Keyock, and Officer
22 Thomas A. Smith; \$5,000,000 per Defendants Corporal Kirk Harryn, and Chief Daniel

1 Pancoast; and \$10,000,000 per Defendants Northampton County and Bethlehem
2 Township.

3 885. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
4 suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs
5 respectfully request a nominal judgment of \$1.00.

6 **XXX. 42 U.S.C. § 1983**

7 **Liability in Connection with Another**

8 **Failure to Intervene**

9 **Smith, et al. v. Northampton County, Bethlehem Township, Officer Andrew**

10 **Keyock, Corporal Kirk Harryn, & Chief Daniel Pancoast**

11 886. Upon information and belief, Plaintiffs Mr. and Mrs. Smith and Newborn baby
12 J.A.S. allege that Defendant Officer Thomas A. Smith, while acting as an agent,
13 employee, or assign of the Bethlehem Police Department violated Plaintiff's Fourth
14 and/or Fourteenth Amendments to the United States Constitution, and Defendant
15 Officer Andrew Keyock should be held liable for the violations of Defendant Officer
16 Thomas A. Smith because Defendant Officer Keyock failed to intervene to stop
17 violations to the Plaintiff Smith Family's constitutional rights.

18 887. In order to demonstrate the defendant state actors' culpability Plaintiffs must
19 prove the following by a preponderance of the evidence: (1) a third party violated a
20 plaintiff's federal rights; (2) defendant state actor had a duty to intervene to prevent a
21 violation of plaintiff's federal rights by that third party; (3) the defendant state actor had a

1 reasonable opportunity to intervene; and, (4) the defendant state actor failed to
2 intervene.

3 888. Upon information and belief, Defendant Officer Thomas A. Smith while in the
4 course and process separating a newborn baby child from its parents without a court
5 order or probable cause, violated Plaintiffs Fourth, and/or Fourteenth Amendment
6 rights.

7 889. Upon information and belief, Defendant Officer Andrew Keyock observed Plaintiff
8 Smith Families' constitutional rights being violated and had a duty to intervene with
9 Defendant Officer Thomas A. Smith to prevent Plaintiff Smith Families' constitutional
10 rights from being violated.

11 890. Upon information and belief, Defendant Officer Andrew Keyock, by conferencing
12 with doctors and other St. Luke's Hospital staff and by allowing the encounter between
13 the Smith's, Officers, and St. Luke's Hospital Staff to last as long as the Defendant
14 Officer Keyock desired, had ample reasonable opportunity to intervene in the actions of
15 Defendant Officer Thomas A. Smith.

16 891. Upon information and belief, Defendant Officer Thomas A. Smith affirmed the
17 decision of St. Luke's Hospital to separate Plaintiff Newborn baby J.A.S. from his
18 parents Plaintiffs Mr. and Mrs. Smith and escorted Mr. and Mrs. Smith under armed
19 guard from St. Luke's Hospital under threat of arrest, thereby demonstrating Defendant
20 Officer Andrew Keyock did not intervene on behalf of the Plaintiffs.

21 892. Therefore, upon information and belief, all of the elements of a Failure to
22 Intervene claim can be legally met and Defendant Officer Andrew Keyock should be

1 liable for not acting on Plaintiff Smith Families' behalf when he observed Officer Thomas
2 A. Smith violating Plaintiffs' constitutional rights.

3 893. Defendant Officer Andrew Keyock, acted by virtue of a custom, pattern, practice,
4 policy, and/or failure to be appropriately trained and/or disciplined, acquiesced in and/or
5 has otherwise authorized other police officers to violate citizens' rights as protected by
6 the United States Constitution by allowing unwarranted, highly intrusive, humiliating,
7 and coercive child abuse investigations into new mothers and their families.

8 894. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
9 evidence that Defendant State Actors conspired with at least one Defendant Private
10 Actor elsewhere listed in this complaint.

11 895. The conspiracy between the Defendant parties and their agents, employees, or
12 assigns violates *42 U.S.C. § 1983*.

13 896. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
14 can demonstrate by a preponderance of the evidence that Officer Andrew Keyock,
15 violated the Plaintiff Smith Family's federal rights, and that supervisor Defendants
16 Corporal Harryn, and Chief Pancoast should be held liable for conduct of subordinates
17 Defendant Officer Andrew Keyock, because as his supervisors directed the actions in
18 question, or had actual knowledge of the violation and acquiesced to it, or with
19 deliberate indifference to the consequences, established and maintained a policy,
20 practice or custom which directly caused the violation.

21 897. Defendants Northampton County and/or Bethlehem Township, through the
22 actions of its Defendant Officers Andrew Keyock, Corporal Kirk Harryn, and Chief
23 Daniel G. Pancoast of the Bethlehem Police Department, violated Plaintiff's rights.

1 898. Plaintiffs assert these claims pursuant to *42 U.S.C. § 1983*.

2 899. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
3 Defendants' conduct, including but not limited to, emotional and psychological distress,
4 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
5 requests appropriate compensatory damages to account for PTSD therapies and other
6 related treatments as they have been and will continue to be necessary; Plaintiffs
7 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

8 900. Given the substantial wealth of the Defendants Northampton County and
9 Bethlehem Township, and therefore, their ability to afford the appropriate training to
10 avoid this egregious violation of the U.S. Constitution, and Defendant Northampton
11 County through its employees, agents, or assigns, Officers Andrew Keyock & Thomas
12 A. Smith, Corporal Kirk Harryn, & Chief Daniel Pancoast, had legal obligations to
13 accurately enforce the law, and, since harm was actually caused to the current Plaintiff
14 Smith Family, and since harm is likely to continue to harm future postpartum families,
15 and because the acts of the Defendants and their agents, assigns, or employees
16 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the
17 Plaintiffs respectfully request the imposition of punitive damages on Defendants
18 Northampton County, and Bethlehem Township, and Officers Andrew Keyock &
19 Thomas A. Smith, Corporal Kirk Harryn, and Chief Daniel Pancoast to deter such
20 Defendants from committing to such conduct in the future which violates the Fourteenth
21 Amendment of the United States Constitution Plaintiffs respectfully request an amount
22 of \$1,000,000 in punitive damages per Defendants Officer Andrew Keyock, and Officer
23 Thomas A. Smith; \$5,000,000 per Defendants Corporal Kirk Harryn, and Chief Daniel

1 Pancoast; and \$10,000,000 per Defendants Northampton County and Bethlehem
2 Township.

3 901. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
4 suffered any actual injury despite the deprivation of their federal rights, the Plaintiffs
5 respectfully request a nominal judgment of \$1.00.

6 **XXXI. 42 U.S.C. § 1983**

7 **Liability in Connection with Another**

8 **Failure to Intervene**

9 **Smith, et al. v. Northampton County, Bethlehem Township, Officer Thomas A.**

10 **Smith, Corporal Kirk Harryn, & Chief Daniel Pancoast**

11 902. Upon information and belief, Plaintiffs Mr. and Mrs. Smith and Newborn baby
12 J.A.S. allege that Defendant Officer Andrew Keyock, while acting as an agent,
13 employee, or assign of the Bethlehem Police Department violated Plaintiff's Fourth
14 and/or Fourteenth Amendments to the United States Constitution, and Defendant
15 Officer Thomas A. Smith should be held liable for the violations of Defendant Officer
16 Andrew Keyock because Defendant Officer Smith failed to intervene to stop violations to
17 the Plaintiff Smith Family's constitutional rights.

18 903. In order to demonstrate the defendant state actors' culpability Plaintiffs must
19 prove the following by a preponderance of the evidence: (1) a third party violated a
20 plaintiff's federal rights; (2) defendant state actor had a duty to intervene to prevent a
21 violation of plaintiff's federal rights by that third party; (3) the defendant state actor had a

1 reasonable opportunity to intervene; and, (4) the defendant state actor failed to
2 intervene.

3 904. Upon information and belief, Defendant Officer Andrew Keyock while in the
4 course and process separating a newborn baby child from its parents without a court
5 order or probable cause, violated Plaintiffs Fourth, and/or Fourteenth Amendment
6 rights.

7 905. Upon information and belief, Defendant Officer Thomas A. Smith observed
8 Plaintiff Smith Families' constitutional rights being violated and had a duty to intervene
9 with Defendant Officer Andrew Keyock to prevent Plaintiff Smith Families' constitutional
10 rights from being violated.

11 906. Upon information and belief, Defendant Officer Thomas A. Smith, by
12 conferencing with doctors and other St. Luke's Hospital staff and by allowing the
13 encounter between the Smith's, Officers, and St. Luke's Hospital Staff to last as long as
14 the Defendant Officer Smith desired, had ample reasonable opportunity to intervene in
15 the actions Officer Andrew Keyock.

16 907. Upon information and belief, Defendant Officer Andrew Keyock affirmed the
17 decision of St. Luke's Hospital to separate Plaintiff Newborn baby J.A.S. from his
18 parents Plaintiffs Mr. and Mrs. Smith and escorted Mr. and Mrs. Smith under armed
19 guard from St. Luke's Hospital under threat of arrest, thereby demonstrating Defendant
20 Officer Thomas A. Smith did not intervene on behalf of the Plaintiffs.

21 908. Therefore, upon information and belief, all of the elements of a Failure to
22 Intervene claim can be legally met and Defendant Officer Thomas A. Smith should be

1 liable for not acting on Plaintiff Smith Families' behalf when he observed Officer Andrew
2 Keyock violating Plaintiffs' constitutional rights.

3 909. Defendant Officer Thomas A. Smith, acted by virtue of a custom, pattern,
4 practice, policy, and/or failure to be appropriately trained and/or disciplined, acquiesced
5 in and/or has otherwise authorized other police officers to violate citizens' rights as
6 protected by the United States Constitution by allowing unwarranted, highly intrusive,
7 humiliating, and coercive child abuse investigations into new mothers and their families.

8 910. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
9 can demonstrate by a preponderance of the evidence that Officer Thomas A. Smith,
10 violated the Plaintiff Smith Family's federal rights, and that supervisor Defendants
11 Corporal Harryn, and Chief Pancoast should be held liable for conduct of subordinates
12 Defendant Officer Thomas A. Smith, because as his supervisor directed the actions in
13 question, or had actual knowledge of the violation and acquiesced to it, or with
14 deliberate indifference to the consequences, established and maintained a policy,
15 practice or custom which directly caused the violation.

16 911. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
17 evidence that Defendant State Actors conspired with at least one Defendant Private
18 Actor elsewhere listed in this claim.

19 912. The conspiracy between the Defendant parties and their agents, employees, or
20 assigns violates *42 U.S.C. § 1983*.

21 913. Defendants Northampton County and/or Bethlehem Township, through the
22 actions of its Defendant Officer Thomas A. Smith, Corporal Kirk Harryn, and Chief
23 Daniel G. Pancoast of the Bethlehem Police Department, violated Plaintiff's rights.

1 914. Plaintiffs assert these claims pursuant to *42 U.S.C. § 1983*.

2 915. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
3 Defendants' conduct, including but not limited to, emotional and psychological distress,
4 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
5 requests appropriate compensatory damages to account for PTSD therapies and other
6 related treatments as they have been and will continue to be necessary; Plaintiffs
7 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

8 916. Defendants Northampton County and/or Bethlehem Township though the
9 Bethlehem Township Police Department, is legally obligated to appropriately train its
10 state actor employees to avoid this egregious violation of the U.S. Constitution, and
11 since harm was actually caused to the current Plaintiff Smith Family, and since harm is
12 likely to continue to harm future similarly situated families, and because the acts of the
13 Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's
14 rights in a reckless and wanton manner, the Plaintiffs respectfully requests the
15 imposition of punitive damages on Defendants Northampton County and/or Bethlehem
16 Township, and Officer Thomas A. Smith, Corporal Kirk Harryn, and Chief Daniel G.
17 Pancoast to deter such Defendants from committing such conduct in the future which
18 violates the United States Constitution Plaintiffs respectfully request an amount of
19 \$1,000,000 in punitive damages per Defendant Officer Thomas A. Smith; \$5,000,000
20 per Defendants Corporal Kirk Harryn, and Chief Daniel Pancoast; and \$10,000,000 per
21 Defendants Northampton County and Bethlehem Township..

1 917. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
2 any actual injury despite the deprivation of his federal rights, the Plaintiffs respectfully
3 request a nominal judgment of \$1.00.

4 **XXXII. 42 U.S.C. § 1983**

5 **Liability in Connection with Another**

6 **Failure to Intervene**

7 **Smith, et al. v. Monroe County, Ms. Adelaide W. Grace, & Mr. Tim Shaw**

8 918. Upon information and belief, Plaintiffs Mr. and Mrs. Smith and Newborn baby
9 J.A.S. allege that doctors Teresa Marino, MD and/or Cynthia M. Shultz, MD, while
10 acting as an agent, employee, or assign of St. Luke's Hospital violated Plaintiff's Fourth
11 and/or Fourteenth Amendments to the United States Constitution, and Defendants Ms.
12 A.W. Grace and Mr. Tim Shaw, operating through the Monroe County Office of Children
13 and Youth Services, should be held liable for the violations of doctors Ms. Teresa
14 Marino, MD and/or Ms. Cynthia Shultz, MD because Defendants Ms. Adelaide W.
15 Grace, and Mr. Tim Shaw failed to intervene to stop violations to the Plaintiff Smith
16 Family's constitutional rights.

17 919. In order to demonstrate the defendant state actor's culpability Plaintiffs must
18 prove the following by a preponderance of the evidence: (1) a third party violated a
19 plaintiff's federal rights; (2) defendant state actor had a duty to intervene to prevent a
20 violation of plaintiff's federal rights by that third party; (3) the defendant state actor had a
21 reasonable opportunity to intervene; and, (4) the defendant state actor failed to
22 intervene.

1 920. Upon information and belief, Defendant third party doctors Ms. Teresa Marlino,
2 MD and Ms. Cynthia Shultz, MD, while in the course and process separating a newborn
3 baby child from its parents without a court order or probable cause, violated Plaintiffs'
4 Fourth, and/or Fourteenth Amendment rights.

5 921. Upon information and belief, Defendants Ms. Adelaide W. Grace, and Mr. Tim
6 Shaw were made aware that Plaintiff Smith Families' constitutional rights were being
7 violated and had a duty to intervene with doctors Ms. Teresa Marlino, MD and/or Ms.
8 Cynthia Shultz, MD to prevent Plaintiff Smith Families' constitutional rights from being
9 violated.

10 922. Upon information and belief, Defendants Ms. Adelaide W. Grace, and Mr. Tim
11 Shaw by conferencing with doctors and other St. Luke's Hospital staff and by allowing
12 the encounter between the Smith's, Officers, and St. Luke's Hospital Staff to continue,
13 had ample reasonable opportunity to intervene in the actions of Defendant doctors Ms.
14 Teresa Marlino, MD, and, Ms. Cynthia Shultz, MD.

15 923. Upon information and belief, Defendants Ms. Adelaide W. Grace, and Mr. Tim
16 Shaw did not prevent the decision of St. Luke's Hospital to separate Plaintiff Newborn
17 baby J.A.S. from his parents Plaintiffs Mr. and Mrs. Smith, and thereby consented to Mr.
18 and Mrs. Smith being separated from Newborn baby J.A.S., thereby demonstrating that
19 Defendants Ms. Adelaide W. Grace, and Mr. Tim Shaw did not intervene on behalf of
20 the Plaintiffs.

21 924. Therefore, upon information and belief, all of the elements of a Failure to
22 Intervene claim can be legally met and Defendants Ms. Adelaide W. Grace, and Mr. Tim
23 Shaw should be liable for not acting on Plaintiff Smith Families' behalf when the

1 Defendant Officers were made aware of Defendant doctors Teresa Marlino, MD and/or
2 Cynthia A. Shultz, MD violating Plaintiffs' constitutional rights.

3 925. Defendants Ms. Adelaide W. Grace, and Mr. Tim Shaw acted by virtue of a
4 custom, pattern, practice, policy, and/or failure to be appropriately trained and/or
5 disciplined, acquiesced in and/or has otherwise authorized other police officers to
6 violate citizens' rights as protected by the United States Constitution by allowing
7 unwarranted, highly intrusive, humiliating, and coercive child abuse investigations into
8 new mothers and their families.

9 926. Defendant Monroe County, through the actions of its Office of Children and
10 Youth Services, violated Plaintiff's rights.

11 927. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
12 evidence that the Defendant State Actors conspired with at least one Defendant Private
13 Actor elsewhere listed in this complaint.

14 928. The conspiracy between the Defendant parties and their agents, employees, or
15 assigns violates *42 U.S.C. § 1983*.

16 929. Under a *Monell* legal theory, upon information and belief, Plaintiff Smith Family
17 can demonstrate by a preponderance of the evidence that Mr. Tim Shaw violated the
18 Plaintiff Smith Family's federal rights, and that supervisor Defendant Ms. Adelaide
19 Grace should be held liable for conduct of subordinate Mr. Tim Shaw, because as his
20 supervisor directed the actions in question, or had actual knowledge of the violation and
21 acquiesced to it, or with deliberate indifference to the consequences, established and
22 maintained a policy, practice or custom which directly caused the violation.

23 930. Plaintiffs assert these claims pursuant to *42 U.S.C. § 1983*.

1 931. Plaintiffs Mr. & Mrs. Smith have suffered substantial harm as a result of
2 Defendants' conduct, including but not limited to, emotional and psychological distress,
3 pain and suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully
4 requests appropriate compensatory damages to account for PTSD therapies and other
5 related treatments as they have been and will continue to be necessary; Plaintiffs
6 respectfully request an amount of \$84,800 in compensatory damages per Defendant.

7 932. Given the substantial wealth of the Defendant Monroe County, and therefore, its
8 ability to afford the appropriate training to avoid this egregious violation of the U.S.
9 Constitution, and Defendant Monroe County through its employees, agents, or assigns,
10 Defendants Ms. Adelaide W. Grace and Mr. Tim Shaw , had legal obligations to
11 accurately enforce the law, and, since harm was actually caused to the current Plaintiff
12 Smith Family, and since harm is likely to continue to harm future postpartum families,
13 and because the acts of the Defendants and their agents, assigns, or employees
14 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the
15 Plaintiffs respectfully request the imposition of punitive damages on Defendants Monroe
16 County, Ms. Adelaide W. Grace and Mr. Tim Shaw to deter such Defendants from
17 committing to such conduct in the future which violates the Fourteenth Amendment of
18 the United States Constitution Plaintiffs respectfully request an amount of \$1,000,000 in
19 punitive damages per Defendant Mr. Tim Shaw; \$5,000,000 per Defendant Ms.
20 Adelaide. W. Grace; and \$10,000,000 per Defendant Monroe County.

21 933. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
22 any actual injury despite the deprivation of their federal rights, the Plaintiffs respectfully
23 request a nominal judgment of \$1.00.

Violations of U.S. Federal Statutory Law

I. Title III of the Americans with Disabilities Act (ADA)

Discrimination by a Place of Public Accommodation

Mrs. Grace Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology Associates & Mr. Jerry Hric, MD

934. 42 U.S.C. §12182(a) of the Americans with Disabilities Act is titled, "**Prohibition of discrimination by public accommodations. (a) General rule,**" and reads: "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."³²

935. 42 U.S.C. §12182(a) continues, "To state a cause of action under this section, the plaintiff must prove that [s]he: "(1) has a disability; (2) was discriminated against on the basis of that disability; (3) was thereby denied goods or services; (4) by a place of public accommodation by the owner or operator of that facility."³³

³²*Ramsay v. Nat'l Bd. of Med. Examiners*, CIVIL ACTION No. 19-CV-2002, at *20 (E.D. Pa. Dec. 30, 2019).

³³*Lewis v. Sheraton Society Hill*, Civil Action No. 96-7936, at *7 (E.D. Pa. July 10, 1997).

1 936. Under the ADA, "[t]he term 'disability['] means, with respect to an individual[:](A)
2 a physical or mental impairment that substantially limits one or more major life activities
3 of such individual; (B) a record of such an impairment; or (C) being regarded as having
4 such an impairment.³⁴

5 937. As to the term "impairment," the applicable Department of Justice ("DOJ")
6 regulations provide that the term "physical or mental impairment" includes ADHD and
7 dyslexia and other specific learning disabilities.³⁵

8 938. "The term "individual with a disability", however, "does not include an individual
9 who is currently engaging in the illegal use of drugs, when the covered entity acts on the
10 basis of such use."³⁶

11 939. "[T]he primary object of attention in cases brought under the ADA should be
12 whether entities covered under the ADA have complied with their obligations," ... and

³⁴ *Ramsay v. Nat'l Bd. of Med. Examiners*, CIVIL ACTION No. 19-CV-2002, at *20 (E.D. Pa. Dec. 30, 2019).

³⁵ 28 C.F.R. § 36.105(b)(2); *Ramsay v. Nat'l Bd. of Med. Examiners*, 968 F.3d 251, 257 (3d Cir. 2020).

³⁶ 42 U.S.C. § 12210(a). *Lewis v. Sheraton Society Hill*, Civil Action No. 96-7936, at *7 (E.D. Pa. July 10, 1997).

1 "that the question of whether an individual's impairment is a disability under the ADA
2 should not demand extensive analysis.""³⁷

3 940. As well, 42 U.S.C. §12102(4)(E)(1). "[T]he determination of whether an
4 impairment substantially limits a major life activity shall be made without regard to the
5 ameliorative effects of mitigating measures such as (I) medication...."³⁸

6 941. In addition, 29 C.F.R. §1630.2(j)(vii). An impairment that is episodic or in
7 remission is a disability if it would substantially limit a major life activity when active."³⁹

8 942. "In enacting the ADA, Congress demonstrated its view that the public has an
9 interest in ensuring the eradication of discrimination on the basis of disabilities."⁴⁰

10 943. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
11 OBHG PA, St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics
12 and Gynecology Associates & Mr. Jerry Hric, MD violated 42 U.S.C. §12182(a) of the
13 Americans with Disabilities Act when they discriminated on the basis of Plaintiff Mrs.
14 Smith's disability of attention deficit hyperactivity disorder (ADHD), and she was denied
15 equal enjoyment of access to her newborn baby child as well as goods, services,

³⁷*Ramsay v. Nat'l Bd. of Med. Examiners*, CIVIL ACTION No. 19-CV-2002, at *23 (E.D. Pa. Dec. 30, 2019).

³⁸*Id.*

³⁹*Id.* at *26.

⁴⁰*Ramsay v. Nat'l Bd. of Med. Examiners*, 968 F.3d 251, 263 (3d Cir. 2020).

1 facilities, privileges, advantages, and accommodations, by Defendants who operate a
2 place of public accommodation.

3 944. 42 U.S.C. §12182(a)(1): Plaintiff Mrs. Smith has a long-recorded medical history
4 of the disability ADHD.

5 945. Plaintiff Mrs. Smith presented printed authentic medical records documenting
6 Plaintiff Mrs. Smith's disability of ADHD upon intake triage to Defendant St. Luke's
7 Hospital.

8 946. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
9 Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
10 Associates & Mr. Jerry Hric, MD, did not dispute the validity of the authentic medical
11 records presented to them by Plaintiff Mrs. Smith, and appeared to accept their contents
12 as truth to Plaintiff Mrs. Smith.

13 947. 42 U.S.C. §12182(a)(2): Plaintiff Mrs. Smith was discriminated on the basis of
14 her disability when an urine drug test performed on Plaintiff Mrs. Smith did not
15 differentiate between legal amphetamines and illegal methamphetamines, and that test
16 was subsequently used to separate Plaintiff Mrs. Smith from her newborn baby.

17 948. Plaintiff Mrs. Smith was legally prescribed Vyvanse for her disability of ADHD.

18 949. Defendant St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
19 Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
20 Associates & Mr. Jerry Hric, MD, was made aware both orally, and in medical
21 documentation upon intake triage that Plaintiff Mrs. Smith was legally prescribed the
22 amphetamine Vyvanse.

1 950. Despite the fact that the Defendants knew that Plaintiff Mrs. Smith would test
2 positive for a urinary drug screen that did not differentiate between legal amphetamines
3 and illegal methamphetamines, the Defendants conducted such a urinary drug screen.

4 951. Intentionally, Defendant St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
5 Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
6 Associates & Mr. Jerry Hric, MD, treated the undifferentiated urinary drug screen as
7 being irrefutably positive for methamphetamine.

8 952. The unfounded accusation that Plaintiff Mrs. Smith ingested methamphetamine
9 was used by Defendant St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
10 Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology
11 Associates & Mr. Jerry Hric, MD against Mrs. Smith to intentionally separate Plaintiff
12 Mrs. Smith from her newborn baby.

13 953. 42 U.S.C. §12182(a)(3): Plaintiff Mrs. Smith was denied the right and service of
14 being with her newborn baby child on the basis of the undifferentiated drug test.

15 954. 42 U.S.C. §12182(a)(4): Defendant St. Luke's Hospital Onsite Neonatal, OBHG
16 PA, St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and
17 Gynecology Associates, and Mr. Jerry Hric, MD are places of public accommodation.

18 955. Plaintiff Mrs. Smith suffers a disability because her long-standing diagnosis which
19 demonstrates a mental impairment.

20 956. Plaintiff Mrs. Smith has a long-standing medical record of her diagnosis of ADHD
21 and history of treatment.

1 957. Because Plaintiff Mrs. Smith never ingested illegal methamphetamine, and in fact
2 took prescription medication as directed by her physician(s), Plaintiff Mrs. Smith's claim
3 is valid under the *ADA*.

4 958. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
5 OBHG PA, St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics
6 and Gynecology Associates, and Mr. Jerry Hric, MD, did not comply with their
7 obligations under the *ADA* because Defendants demanded an extensive analysis of
8 Plaintiff Mrs. Smith's disability when Defendants chose to disregard that the cause of
9 her unfounded positive results of the undifferentiated drug test were due to a
10 prescription medication that Defendant St. Luke's Hospital, Onsite Neonatal, OBHG PA,
11 St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and
12 Gynecology Associates, and Mr. Jerry Hric, MD knew to expect, and not the unlikely
13 event that Plaintiff Mrs. Smith had ingested methamphetamine.

14 959. By disregarding the valid reason for the positive undifferentiated drug test results,
15 and outright refusing to contact Plaintiff Mrs. Smith's treating physicians, Defendant St.
16 Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physician's Group, Bethlehem
17 Neonatal, St. Luke's Obstetrics and Gynecology Associates, and Mr. Jerry Hric, MD,
18 was not acknowledging that Plaintiff Mrs. Smith suffered from a known disability.

19 960. Just because Plaintiff Mrs. Smith was not suffering from the effects of ADHD
20 while she was in the hospital does not mean that she did not have a disability, merely
21 that such a disability was episodic.

22 961. Congressional interest in pursuing the public interest goals of the *ADA* demand
23 that the public has an innate ability to trust its healthcare facilities, which includes not

1 persecuting postpartum mothers who consume medication to mitigate symptoms of their
2 disability.

3 962. If Plaintiff Mrs. Smith had known that there was any chance that she would be
4 separated from her newborn child at Defendant's hospital facility because she suffers
5 from the disability of ADHD, Mrs. Smith never would have had her child there, which
6 would have forced Plaintiff Mrs. Smith to travel farther distances during an emergency
7 to locate a hospital that would not attempt to separate her from her newborn child based
8 on undifferentiated drug testing.

9 963. Plaintiffs assert these claims pursuant to *Title III of the Americans with*
10 *Disabilities Act*.

11 964. Plaintiff Mrs. Smith has suffered substantial harm as a result of Defendants'
12 conduct, including but not limited to, emotional and psychological distress, pain and
13 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
14 appropriate compensatory damages to account for PTSD therapies and other related
15 treatments as they have been and will continue to be necessary; Plaintiff respectfully
16 requests an amount of \$59,500 in compensatory damages per Defendant.

17 965. Given the substantial wealth of the Defendants Defendant St. Luke's Hospital,
18 Onsite Neonatal, OBHG PA, St. Luke's Physician's Group, Bethlehem Neonatal, St.
19 Luke's Obstetrics and Gynecology Associates & Mr. Jerry Hric, MD, and therefore, their
20 ability to afford the appropriate training to avoid this egregious violation of the U.S.
21 Constitution, and, since harm was actually caused to the current Plaintiff Mrs. Smith,
22 and since harm is likely to continue to future postpartum families, and because the acts
23 of the Defendants and their agents, assigns, or employees callously disregarded the

Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants Defendant St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology Associates & Mr. Jerry Hric, MD, to deter such Defendants from committing to such conduct in the future which violates *Title III of the Americans with Disabilities Act* Plaintiff respectfully requests an amount of \$1,000,000 in punitive damages per Defendants St. Luke's Physician's Group, Bethlehem Neonatal, St. Luke's Obstetrics and Gynecology Associates, and Mr. Jerry Hric, MD; \$5,000,000 per Defendants Onsite Neonatal, and OBHG PA; and \$10,000,000 per Defendant St. Luke's Hospital.

966. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of her federal rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

Violations of Pennsylvania Constitutional Law

I. Article I, § 8

Violation of Right to be Free from Unwarranted Searches & Seizures

Mrs. Smith v. Monroe County

967. Defendant Monroe County, through its Office of Children and Youth Services required Plaintiff Mrs. Smith to submit a urine drug test and a hair follicle drug test in violation of her right to privacy under *Art. 1 § 8* of the Pennsylvania Constitution.

1 968. Upon information and belief, Defendant Monroe County, through the actions of
2 Monroe County CYS, by virtue of a custom, pattern, practice, policy and/or failure to
3 appropriately train and/or discipline, authorizes its caseworkers to act in an
4 unconstitutional fashion by requiring postpartum women to submit to redundant urine
5 and hair follicle drug tests based solely on a hospital report that does not differentiate
6 between legal amphetamines and illegal methamphetamines and without any basis to
7 believe that Grace abused or neglected her newborn child.

8 969. Defendant Monroe County, through the actions of its Office of Children and
9 Youth Services, violated Plaintiff's rights under *Art. 1, § 8*, of the Pennsylvania
10 Constitution.

11 970. Plaintiff Mrs. Smith has suffered substantial harm as a result of Defendants'
12 conduct, including but not limited to, emotional and psychological distress, pain and
13 suffering, fear, humiliation, chagrin, and anguish; and, therefore the Plaintiff respectfully
14 requests appropriate declaratory policy changes from each Defendant involved in this
15 claim to prevent further acts of injustice in the future.

16 971. Plaintiff Mrs. Smith respectfully requests that the following declaratory judgments
17 from this Honorable Court: (1) Each Defendant involved in requesting drug testing from
18 Plaintiff Mrs. Smith be immediately dismissed from their positions at Monroe County
19 Children and Youth Services; (2) that each dismissed employee should lose the value of
20 any accrued benefits in association with the Commonwealth of Pennsylvania that would
21 extend to the former employees after dismissal; (3) An independent criminal
22 investigation by the Commonwealth into not only the role CYS played in the Smith
23 Case, but into the overall patterns and practices of Monroe County CYS to ensure that

1 all employees and staff are indeed trained well enough for the weight of the positions
2 that they bear; (4) Monroe County be forced to hire an independent evaluator(s) to
3 investigate if training for employees in the Monroe County Office of Children and Youth
4 Services to determine if employees know what laws they are actually enforcing, and
5 what they actually have jurisdiction over; (5) Require all Commonwealth CYS
6 employees to read *Miranda* or *Miranda-like* rights to individuals being investigated by
7 CYS at the initiation of an investigation: (6) prohibit threats of further uses of force
8 against a family if a mother or father refuses to comply with a drug test (i.e. CYS cannot
9 call the police because of refusal to take a drug test): (7) provides a public defender to
10 any Monroe County citizen whom Monroe County CYS claims a need to physically see
11 children associated with a particular allegation; (8) any Pennsylvania citizen should
12 have access to an immediate appeals process for technical violations of PA statutory,
13 constitutional, and common laws concerning Children and Youth Services and while
14 such an appeals process is being undergone the claim at hand should be investigated
15 by a magisterial court, during which period all investigations into the individual(s) being
16 conducted by CYS should be suspended until a valid judgement from the magisterial
17 court allowing the case to proceed if technical legal violations were not actually found by
18 the magistrate; (9) and, of course, any other meritorious remedy that the Court sees fit.

19 II. Article I, § 8

20 Violation of Right to be Free from Unwarranted Searches & Seizures

21 Newborn baby J.A.S. v. Monroe County

1 972. Defendant Monroe County CYS required St. Luke's Hospital to release
2 confidential medical records of Plaintiff Newborn baby J.A.S. to Defendant Monroe
3 County CYS that Monroe County CYS reasonably knew would contain the results of
4 illegal drug tests, thereby encouraging St. Luke's Hospital to record, collect, and collate
5 detailed records to be used in future prosecution against a newborn baby's parents, and
6 to separate newly born children from their parents in violation of Plaintiff Newborn baby
7 J.A.S.'s right to privacy under *Art. 1, § 8* of the Pennsylvania Constitution.

8 973. Upon information and belief, Defendant Monroe County, through its Office of
9 Children and Youth Services, by virtue of a custom, pattern, practice, policy and/or
10 failure to appropriately train and/or discipline, authorizes its caseworkers to act in an
11 unconstitutional fashion by encouraging hospitals, in this case St. Luke's Hospital, to
12 submit undifferentiated drug tests as a tool for future prosecution of the newly born
13 child's parents, and/or to be used to separate a newborn child from its parents.

14 974. Defendant Monroe County CYS knowingly pursues child abuse cases based
15 solely on hospital reports that do not differentiate between legal amphetamines and
16 illegal methamphetamines and without any basis to believe that Mrs. Smith abused or
17 neglected her newborn child.

18 975. Defendant Monroe County, through the actions of its Office of Children and
19 Youth Services, violated Plaintiff's rights under *Art. 1, § 8*, of the Pennsylvania
20 Constitution.

21 976. Plaintiff Newborn baby J.A.S. has suffered substantial harm as a result of
22 Defendant's conduct, including but not limited to, emotional and psychological
23 distresses from being taken from his mother's care shortly after birth; and, therefore the

1 Plaintiff respectfully requests appropriate declaratory policy changes from each
2 Defendant involved in this claim to prevent further acts of injustice in the future.

3 977. Plaintiff Mrs. Smith respectfully requests that the following declaratory judgments
4 from this Honorable Court: (1) Each Defendant involved in requesting drug testing from
5 Plaintiff Mrs. Smith be immediately dismissed from their positions at Monroe County
6 Children and Youth Services; (2) that each dismissed employee should lose the value of
7 any accrued benefits in association with the Commonwealth of Pennsylvania that would
8 extend to the former employees after dismissal; (3) An independent criminal
9 investigation by the Commonwealth into not only the role CYS played in the Smith
10 Family Case, but into the overall patterns and practices of Monroe County CYS to
11 ensure that all employees and staff are indeed trained well enough for the weight of the
12 positions that they bear; (4) Monroe County be forced to hire an independent
13 evaluator(s) to investigate if training for employees in the Monroe County Office of
14 Children and Youth Services to determine if employees know what laws they are
15 actually enforcing, and what they actually have jurisdiction over; (5) Require all
16 Commonwealth CYS employees to read *Miranda* or *Miranda-like* rights to individuals
17 being investigated by CYS at the initiation of an investigation; (6) prohibit threats of
18 further uses of force against a family if a mother or father refuses to comply with a drug
19 test (i.e. CYS cannot call the police because of refusal to take a drug test); (7) provides
20 a public defender to any Monroe County citizen whom Monroe County CYS claims a
21 need to physically see children associated with a particular allegation; (8) any
22 Pennsylvania citizen should have access to an immediate appeals process for technical
23 violations of PA statutory, constitutional, and common laws concerning Children and

1 Youth Services and while such an appeals process is being undergone the claim at
2 hand should be investigated by a magisterial court, during which period all
3 investigations into the individual(s) being conducted by CYS should be suspended until
4 a valid judgement from the magisterial court allowing the case to proceed if technical
5 legal violations were not actually found by the magistrate; (9) and, of course, any other
6 meritorious remedy that the Court sees fit.

7 **Violations of Pennsylvania Statutory Law**

8 **I. § 6315 Child Protective Services**

9 **Illegal Taking of a Child into Protective Custody**

10 **Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,**
11 **MD, Ms. Cynthia Shultz, MD, Monroe County, Mr. Tim Shaw & Ms. Adelaide W.**

12 **Grace**

13 978. *Pa. Code § 6315* allows for children to be taken into protective custody by a
14 private entity or state agency.

15 979. *Pa. Code § 6315 (a)(2)* allows a physician of a hospital where a child is being
16 treated to be taken into protective custody if protective custody is immediately
17 necessary to protect a child pursuant to the Pa. Code.

18 980. *Pa. Code § 6315 (a)(3)* allows a hospital to accept a newborn into protective
19 custody if the newborn is being voluntarily relinquished by the parents pursuant to
20 Chapter 65 of the Pa. Code.

1 981. Upon information and belief Plaintiff Smith Family can demonstrate that at or
2 around 7pm on April 9th, 2021 Newborn baby J.A.S. was separated from his parents Mr.
3 and Mrs. Smith by Defendants St. Luke's, *et al.*, against the consent of Mr. and Mrs.
4 Smith, thereby placing newborn baby Julian under the protective custody of Defendants
5 St. Luke's Hospital, Onsite Neonatal, and Monroe County acting through its Office of
6 Children and Youth Services.

7 982. Upon information and belief, Defendant physicians Ms. Teresa Marlino, MD, and
8 Ms. Shultz, MD, acting within the scope of their employment, were the physicians
9 responsible for the act of separating Plaintiffs Mr. and Mrs. Smith from Plaintiff Newborn
10 baby J.A.S. and were responsible for Newborn baby J.A.S. being taken into protective
11 custody by St. Luke's Hospital, Onsite Neonatal, and OBHG PA.

12 983. There was not any probable cause to believe that Newborn baby J.A.S. had
13 suffered neglect or abuse at the hands of his parents, and therefore it was not
14 immediately necessary for Defendants to take Plaintiff Newborn baby J.A.S. into
15 custody because there was no need to protect Plaintiff Newborn baby J.A.S. from his
16 Plaintiff parents Mr. and Mrs. Smith.

17 984. Upon information and belief, Defendants Monroe County, Mr. Tim Shaw and Ms.
18 Adelaide Grace were each made aware that St. Luke's Hospital took protective custody
19 of Plaintiff Newborn baby J.A.S. on or about 7pm on April 9th, 2021.

20 985. Upon information and belief, Defendants violated § 6315 (a)(2) and § 6315 (a)(3)
21 when Plaintiff Newborn baby J.A.S. was taken into protective custody by the agents,
22 employees, or assigns of Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA,
23 Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, as well as, Defendants Monroe

1 County, Mr. Tim Shaw, and Ms. Adelaide Grace, acting through the Monroe County
2 Office of Children and Youth Services, without consent of Plaintiffs Mr. and Mrs. Smith,
3 who never had any intention whatsoever of relinquishing custody of Plaintiff Newborn
4 baby J.A.S to any Defendants.

5 986. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
6 evidence that the Defendant State Actors conspired with at least one Defendant Private
7 Actor elsewhere listed in this complaint.

8 987. The conspiracy between the Defendant parties and their agents, employees, or
9 assigns and against the Plaintiff parties violates Pennsylvania Common Law.

10 988. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
11 conduct, including but not limited to, emotional and psychological distress, pain and
12 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
13 appropriate compensatory damages to account for PTSD therapies and other related
14 treatments as they have been and will continue to be necessary.

15 989. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
16 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, and therefore,
17 its ability to afford the appropriate training to avoid this egregious violation of the
18 Pennsylvania Statutory Law, and Defendant Monroe County through its employees,
19 agents, or assigns, Ms. Adelaide W. Grace, and Mr. Tim Shaw, had legal obligations to
20 accurately enforce the law, and, since harm was actually caused to the current Plaintiff
21 Smith Family, and since harm is likely to continue to harm future postpartum families,
22 and because the acts of the Defendants and their agents, assigns, or employees
23 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff

1 respectfully requests the imposition of punitive damages on Defendants St. Luke's
2 Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD,
3 Monroe County, Ms. Adelaide W. Grace, and Mr. Tim Shaw to deter such Defendants
4 from committing to such conduct in the future which violates Commonwealth of
5 Pennsylvania Statutory Law.

6 990. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
7 Court sees appropriate either compensatory and/or punitive.

8 991. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
9 any actual injury despite the deprivation of their statutory rights, the Plaintiffs
10 respectfully request a nominal judgment of \$1.00.

11 **II. § 6315 Child Protective Services**

12 **Violation of When a Child may be Removed into Protective Custody**

13 **Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians**
14 **Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates,**
15 **Monroe County, Mr. Tim Shaw & Ms. Adelaide W. Grace**

16 992. *Pa. Code § 6315* allows for children to be taken into protective custody by a
17 private entity or state agency.

18 993. *Pa. Code § 6315 (a)(4)* instructs the Office of Children and Youth Services to
19 take a child into protective custody from abuse after the receipt of a court order.

20 994. *Pa. Code § 6315 (a)(4)* instructs that an Office of Children and Youth Services
21 agency worker may not take a child into custody without judicial authorization.

1 995. Upon information and belief, Monroe County through its employees, agents, or
2 assigns, Mr. Tim Shaw, and Ms. Adelaide. W. Grace, via its Office of Children and
3 Youth Services ordered St. Luke's Hospital to take protective custody of Plaintiff
4 Newborn baby J.A.S., either through active communication to do so, or through
5 awareness of Plaintiff Smith Family's situation and passively assenting to the conduct of
6 taking Newborn baby J.A.S. into protective custody under the responsibility of St. Luke's
7 Hospital.

8 996. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
9 OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics &
10 Gynecology Associates, and Monroe County through its employees, agents, or assigns,
11 Mr. Tim Shaw, and Ms. Adelaide. W. Grace, via its Office of Children and Youth
12 Services violated *Pa. Code § 6315 (a)(4)* by taking, or assenting to the taking of Plaintiff
13 Newborn baby J.A.S. into protective custody without a court order, and without
14 necessity to separate Plaintiff Newborn baby J.A.S. from his Plaintiff parents Mr. and
15 Mrs. Smith.

16 997. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
17 evidence that the Defendant State Actors conspired with at least one Defendant Private
18 Actor elsewhere listed in this complaint.

19 998. The conspiracy between the Defendant parties and their agents, employees, or
20 assigns and against the Plaintiff parties violates Pennsylvania Common Law.

21 999. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
22 conduct, including but not limited to, emotional and psychological distress, pain and
23 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests

1 appropriate compensatory damages to account for PTSD therapies and other related
2 treatments as they have been and will continue to be necessary.

3 1000. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
4 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
5 Obstetrics & Gynecology Associates, and therefore, its ability to afford the appropriate
6 training to avoid this egregious violation of the Pennsylvania Statutory Law, and
7 Defendant Monroe County through its employees, agents, or assigns, Ms. Adelaide W.
8 Grace, and Mr. Tim Shaw, had legal obligations to accurately enforce the law, and,
9 since harm was actually caused to the current Plaintiff Smith Family, and since harm is
10 likely to continue to harm future postpartum families, and because the acts of the
11 Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's
12 rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition
13 of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
14 Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
15 Associates, Monroe County, Ms. Adelaide W. Grace, and Mr. Tim Shaw to deter such
16 Defendants from committing to such conduct in the future which violates
17 Commonwealth of Pennsylvania Statutory Law.

18 1001. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
19 Court sees appropriate either compensatory and/or punitive.

20 1002. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
21 any actual injury despite the deprivation of their statutory rights, the Plaintiffs
22 respectfully request a nominal judgment of \$1.00.

23 **III. § 6315 Child Protective Services**

1 Violation of Duration for Which a Child may be Retained in Protective Custody

2 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians

3 Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates,

4 Monroe County, Mr. Tim Shaw & Ms. Adelaide W. Grace

5 1003. *Pa. Code § 6315* allows for children to be taken into protective custody by a
6 private entity or state agency.

7 1004. *Pa. Code § 6315 (b)* states that the duration to take a child into protective
8 custody is not to be longer than 24 hours without the receipt of a court order to retain
9 protective custody.

10 1005. *Pa. Code § 6315 (b)* states that the duration to take a child into protective
11 custody for 24 hours begins when protective custody begins.

12 1006. *Pa. Code § 6315 (b)* states that "[e]ach court shall insure that a judge is available
13 24 hours a day, 365 days a year to accept and decide the actions brought by a county
14 agency under this subsection within the 24-hour period."

15 1007. Upon information and belief, on or around 7pm on April 9th, 2021, Plaintiff
16 Newborn baby J.A.S. was taken into protective custody by Defendants St. Luke's
17 Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
18 Neonatal, St. Luke's Obstetrics & Gynecology Associates and was not returned to
19 both of his parents within a 24-hour period.

20 1008. Upon information and belief, neither Defendant St. Luke's Hospital, nor Monroe
21 County CYS, nor any other named Defendant in this allegation obtained a court order to
22 place Plaintiff Newborn baby J.A.S. in protective custody.

1 1009. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
2 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
3 Associates and Monroe County CYS, had an affirmative duty to attempt to contact a
4 judge when Plaintiff Newborn baby J.A.S. was taken into protective custody.

5 1010. Upon information and belief, due to the fact that neither a person, nor an entity,
6 nor a state actor, obtained a court order to place Plaintiff Newborn baby J.A.S. in
7 protective custody, Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
8 Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
9 Associates, and Monroe County CYS, via its agents, employees or assigns, Mr. Tim
10 Shaw, and M. Adelaide Grace violated *Pa. Code § 6315 (b)*.

11 1011. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
12 evidence that the Defendant State Actors conspired with at least one Defendant Private
13 Actor elsewhere listed in this complaint.

14 1012. The conspiracy between the Defendant parties and their agents, employees, or
15 assigns and against the Plaintiff parties violates Pennsylvania Common Law.

16 1013. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
17 conduct, including but not limited to, emotional and psychological distress, pain and
18 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
19 appropriate compensatory damages to account for PTSD therapies and other related
20 treatments as they have been and will continue to be necessary.

21 1014. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
22 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's

1 Obstetrics & Gynecology Associates, and therefore, its ability to afford the appropriate
2 training to avoid this egregious violation of the Pennsylvania Statutory Law, and
3 Defendant Monroe County through its employees, agents, or assigns, Ms. Adelaide W.
4 Grace, and Mr. Tim Shaw, had legal obligations to accurately enforce the law, and,
5 since harm was actually caused to the current Plaintiff Smith Family, and since harm is
6 likely to continue to harm future postpartum families, and because the acts of the
7 Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's
8 rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition
9 of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
10 Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
11 Associates, Monroe County, Ms. Adelaide W. Grace, and Mr. Tim Shaw to deter such
12 Defendants from committing to such conduct in the future which violates
13 Commonwealth of Pennsylvania Statutory Law.

14 1015. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
15 Court sees appropriate either compensatory and/or punitive.

16 1016. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
17 any actual injury despite the deprivation of their statutory rights, the Plaintiffs
18 respectfully request a nominal judgment of \$1.00.

19 **IV. § 6315 Child Protective Services**

20 **Violation of Proper Notice when Removing a Child into Protective Custody**

1 Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
2 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
3 Associates, Monroe County, Mr. Tim Shaw & Ms. Adelaide W. Grace

4 1017. *Pa. Code § 6315* allows for children to be taken into protective custody by a
5 private entity or state agency.

6 1018. *Pa. Code § 6315 (c)(1)* states, "...an individual taking a child into protective
7 custody under this chapter shall immediately, and within 24 hours in writing, notify the
8 parent, guardian or other custodian of the child of the whereabouts of the child, unless
9 prohibited by court order, and the reasons for the need to take the child into protective
10 custody and shall immediately notify the appropriate county agency in order that
11 proceedings under *42 Pa. C.S. Ch. 63* (relating to juvenile matters) may be initiated, if
12 appropriate."

13 1019. Upon information and belief, no Defendant obtained a court order to place
14 Plaintiff Newborn baby J.A.S. into protective custody and therefore no knowledge about
15 Plaintiff Newborn baby J.A.S. was to be prohibited to Plaintiff parents Mr. and Mrs.
16 Smith by either a private entity or the state.

17 1020. Upon information and belief, Plaintiffs Mr. and Mrs. Smith, within 24-hours of
18 Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians
19 Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates taking
20 unwarranted protective custody of Plaintiff Newborn baby J.A.S., did not ever receive a
21 notice for the rationale of taking Plaintiff Newborn baby J.A.S. into protective custody

1 and the whereabouts of Plaintiff Newborn baby J.A.S. when he was not in the presence
2 of his parents.

3 1021. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
4 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
5 Associates, Monroe County, Ms. Adelaide W. Grace, and Mr. Tim Shaw, had an
6 affirmative duty to contact Plaintiffs Mr. and Mrs. Smith, in writing, about the
7 whereabouts and rationale for placing Plaintiff Newborn baby J.A.S into protective
8 custody.

9 1022. Upon information and belief, due to the fact that neither a person, nor an entity,
10 nor a state actor, obtained a court order to place Plaintiff Newborn baby J.A.S. in
11 protective custody, and because Plaintiffs Mr. and Mrs. Smith were not given proper
12 notice of the whereabouts of their child, nor any rationale in writing, Defendants St.
13 Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
14 Neonatal, St. Luke's Obstetrics & Gynecology Associates, Monroe County, Ms.
15 Adelaide W. Grace, and Mr. Tim Shaw, among other Defendants violated *Pa. Code* §
16 6315 (b).

17 1023. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
18 evidence that the Defendant State Actors conspired with at least one Defendant Private
19 Actor elsewhere listed in this complaint.

20 1024. The conspiracy between the Defendant parties and their agents, employees, or
21 assigns and against the Plaintiff parties violates Pennsylvania Common Law.

22 1025. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
23 conduct, including but not limited to, emotional and psychological distress, pain and

1 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
2 appropriate compensatory damages to account for PTSD therapies and other related
3 treatments as they have been and will continue to be necessary.

4 1026. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
5 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
6 Obstetrics & Gynecology Associates, and therefore, its ability to afford the appropriate
7 training to avoid this egregious violation of the Pennsylvania Statutory Law, and
8 Defendant Monroe County through its employees, agents, or assigns, Ms. Adelaide W.
9 Grace, and Mr. Tim Shaw, had legal obligations to accurately enforce the law, and,
10 since harm was actually caused to the current Plaintiff Smith Family, and since harm is
11 likely to continue to harm future postpartum families, and because the acts of the
12 Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's
13 rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition
14 of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
15 Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
16 Associates, Monroe County, Ms. Adelaide W. Grace, and Mr. Tim Shaw to deter such
17 Defendants from committing to such conduct in the future which violates
18 Commonwealth of Pennsylvania Statutory Law.

19 1027. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
20 Court sees appropriate either compensatory and/or punitive.

21 1028. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
22 any actual injury despite the deprivation of their statutory rights, the Plaintiffs
23 respectfully request a nominal judgment of \$1.00.

V. § 6315 Child Protective Services

Violation of No Parental Conference when Removing a Child into Protective

Custody

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's

Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology

Associates, Monroe County, Mr. Tim Shaw & Ms. Adelaide W. Grace

1029. *Pa. Code* § 6315 allows for children to be taken into protective custody by a private entity or state agency.

1030. *Pa. Code* § 6315 (f) states, “A conference between the parent, guardian or other custodian of the child taken into temporary protective custody pursuant to this section and the employee designated by the county agency to be responsible for the child shall be held within 48 hours of the time that the child is taken into custody for the purpose of:

(1) Explaining to the parent, guardian or other custodian the reasons for the temporary detention of the child and the whereabouts of the child, unless prohibited by court order.

(2) Expediting, wherever possible, the return of the child to the custody of the parent, guardian or other custodian where custody is no longer necessary.

(3) Explaining to the parent, guardian or other custodian the rights provided for under 42 Pa. C.S. §§ 6337 (relating to right to counsel) and 6338 (relating to other basic rights).”

1031. On or about 7pm on April 9th, 2021 Plaintiff Newborn baby J.A.S. was taken into protective custody by Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.

1 Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
2 Associates.

3 1032. By approximately 7pm on April 11th, 2021, there had not been a conference held
4 between the Plaintiffs Mr. and Mrs. Smith, a representative of Defendants St. Luke's
5 Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
6 Neonatal, St. Luke's Obstetrics & Gynecology Associates, and a representative of
7 Defendant Monroe County Children and Youth Services for the purposes of explaining
8 Plaintiff Newborn baby J.A.S.'s detention or a determination of whether maintaining
9 protective custody was necessary.

10 1033. When Plaintiff Newborn baby J.A.S. was placed in protective custody against the
11 consent of Plaintiffs Mr. and Mrs. Smith; Mr. and Mrs. Smith were not provided with an
12 explanation of rights under 42 Pa. C. S. §§ 6337 (relating to right to counsel) and 6338
13 (relating to other basic rights) by any Defendant.

14 1034. Upon information and belief, due to the fact that neither a person, nor an entity,
15 nor a state actor, obtained a court order to place Plaintiff Newborn baby J.A.S. in
16 protective custody, and because Plaintiffs Mr. and Mrs. Smith were not given a
17 conference within 48-hours of Plaintiff Newborn baby J.A.S. being taken into protective
18 custody, Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
19 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
20 Associates, Monroe County, Ms. Adelaide W. Grace, and Mr. Tim Shaw violated Pa.
21 Code § 6315 (f).

22 1035. Upon information and belief, due to the fact that neither a person, nor an entity,
23 nor a state actor, obtained a court order to place Plaintiff Newborn baby J.A.S. in

1 protective custody, and because Plaintiffs Mr. and Mrs. Smith were not given
2 information regarding their basic rights and rights to counsel, Defendants St. Luke's
3 Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
4 Neonatal, St. Luke's Obstetrics & Gynecology Associates, Monroe County, Ms.
5 Adelaide W. Grace, and Mr. Tim Shaw violated *Pa. Code § 6315 (f)(3)*.

6 1036. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
7 evidence that the Defendant State Actors conspired with at least one Defendant Private
8 Actor elsewhere listed in this complaint.

9 1037. The conspiracy between the Defendant parties and their agents, employees, or
10 assigns and against the Plaintiff parties violates Pennsylvania Common Law.

11 1038. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
12 conduct, including but not limited to, emotional and psychological distress, pain and
13 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
14 appropriate compensatory damages to account for PTSD therapies and other related
15 treatments as they have been and will continue to be necessary.

16 1039. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
17 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
18 Obstetrics & Gynecology Associates, and therefore, its ability to afford the appropriate
19 training to avoid this egregious violation of the Pennsylvania Statutory Law, and
20 Defendant Monroe County through its employees, agents, or assigns, Ms. Adelaide W.
21 Grace, and Mr. Tim Shaw, had legal obligations to accurately enforce the law, and,
22 since harm was actually caused to the current Plaintiff Smith Family, and since harm is
23 likely to continue to harm future postpartum families, and because the acts of the

Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Monroe County, Ms. Adelaide W. Grace, and Mr. Tim Shaw to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Statutory Law.

1040. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the Court sees appropriate either compensatory and/or punitive.

1041. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their statutory rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

VI. § 28 Pa. Code, Newborn Care & Policies

Violation of Parent's Right to Choose the Timing of Specimen Collection of their Child

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates

1042. 28 Pa. Code §§ 28.22 & 28.26 directs the timing of initial and follow up of specimen collections by birth centers and hospitals:

1 (c) *Pa. Code §§ 28.22 & 28.26* states, “A birth center or hospital shall collect the initial
2 specimen from each newborn child regardless of feeding history or medical
3 condition, as close to 48 hours of age as possible but not later than 72 hours of age
4 unless the newborn child falls into one of the following categories:

5 (d) (3) *Early discharge*. If the newborn child is discharged from the birth center or
6 hospital before 24 hours of age, the birth center or hospital shall collect the initial
7 specimen from the newborn child as close to the time of discharge as is practicable,
8 regardless of feeding history or medical condition. The birth center or hospital shall
9 give the parent or guardian in whose care and custody the newborn child is
10 discharged written notification of the need for a repeat specimen and shall also
11 provide instructions to the parent or guardian for obtaining a repeat specimen from
12 the newborn child as described in § 28.26 (relating to timing of repeat specimen
13 collection); and,

14 § 28.26. *Timing of [R]epeat [S]pecimen [C]ollection.*

15 (b) When the newborn child has been discharged from a birth center or hospital before
16 24 hours of age, the birth center or hospital shall collect or cause to be collected a
17 repeat specimen from the newborn child, regardless of feeding history or medical
18 condition, as close to 48 hours of age as possible but not later than 72 hours of
19 age.”

20 1043. Considering there were no complications with either Plaintiff Mrs. Smith or
21 Newborn baby J.A.S., Plaintiffs Mr. and Mrs. Smith requested that Newborn baby J.A.S.
22 and Plaintiff Mrs. Smith be discharged by Defendant St. Luke’s Hospital sometime
23 within 24-hours of Newborn baby J.A.S.’s birth.

1 1044. When Plaintiffs Mr. and Mrs. Smith requested that Newborn baby J.A.S. be
2 discharged within a day, they specifically requested that Newborn baby J.A.S. have all
3 necessary testing completed as soon as practically possible.

4 1045. Despite no complications with Newborn baby J.A.S., Plaintiffs Mr. and Mrs. Smith
5 were denied the right to remove Newborn baby J.A.S. from St. Luke's Hospital within
6 24-hours as requested.

7 1046. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
8 Physicians Group, Bethlehem Neonatal, and St. Luke's Obstetrics & Gynecology
9 Associates, collected specimens from Newborn baby J.A.S. at their leisure, and against
10 the consent of his parents, Plaintiffs Mr. and Mrs. Smith.

11 1047. Upon information and belief, due to the fact that neither a person, nor an entity,
12 nor a state actor, obtained a court order to place Newborn baby J.A.S. in protective
13 custody, and because Plaintiffs Mr. and Mrs. Smith were denied the right to choose,
14 consent, and schedule appropriate medical care for Newborn baby J.A.S., including the
15 timing of tests administered to Newborn baby J.A.S., Defendants St. Luke's Hospital,
16 Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, and St.
17 Luke's Obstetrics & Gynecology Associates violated *28 Pa. Code §§ 28.22 & 28.26*.

18 1048. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
19 conduct, including but not limited to, emotional and psychological distress, pain and
20 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
21 appropriate compensatory damages to account for PTSD therapies and other related
22 treatments as they have been and will continue to be necessary.

1049. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, and therefore, its ability to afford the appropriate training to avoid this egregious violation of the Pennsylvania Statutory Law, and, since harm was actually caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Statutory Law.

1050. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the Court sees appropriate either compensatory and/or punitive.

1051. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their statutory rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

VII. § 28 Pa. Code, Newborn Care & Policies

Violation of Parent's Right to Deny Consent for Prophylactic Treatment for their Child

**Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa
Marlino, MD, Ms. Cynthia Shultz, MD & Mr. Jerry Hric, MD**

1 1052. 28 Pa. Code § 27.98 directs prophylactic treatment in newborn baby eyes by
2 birth centers and hospitals:

3 (a) Physicians and midwives attending women in childbirth shall instill in
4 each eye of the newborn child, as soon as practicable after birth, either a 1%
5 silver nitrate solution, or erythromycin ophthalmic ointment or solution as a single
6 application in both conjunctival sacs, or appropriate medication approved by the
7 Department.

8 1053. Prophylactic eye treatments are for treating potential sexually transmitted
9 diseases being transmitted from the infected parent to the newborn infant.

10 1054. Plaintiff Mrs. Smith was tested for all relevant sexually transmitted diseases for
11 which ophthalmic prophylactics are required, and tested negative.

12 1055. Since there was no cause to treat Newborn baby J.A.S. because Plaintiff Mrs.
13 Smith did not test positive for a sexually transmitted disease, Plaintiffs Mr. and Mrs.
14 Smith requested that Newborn baby J.A.S. not receive ophthalmic prophylactic solution
15 on his eyes.

16 1056. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA were made aware
17 when Newborn baby J.A.S. was removed to the NICU and was to be given antibiotics
18 that Plaintiff Mr. Smith has a very strong reaction to penicillin and its derivatives and that
19 Newborn baby J.A.S. was not to receive any penicillin or penicillin derivatives.

20 1057. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
21 OBHG PA, Ms. Teresa Marlino, MD, & Ms. Cynthia Shultz, MD applied erythromycin
22 ophthalmic solution to Newborn baby J.A.S.'s eyes.

23 1058. Erythromycin is a penicillin derivative.

1 1059. Upon information and belief, due to the fact that Plaintiffs Mr. and Mrs. Smith
2 were denied the right to choose and consent to appropriate medical care for Newborn
3 baby J.A.S., when Pennsylvania Law directs alternatives within the scope of the Plaintiff
4 parents request, Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
5 Teresa Marlino, MD, & Ms. Cynthia Shultz, MD violated *28 Pa. Code § 28.22*.

6 1060. Upon information and belief, given that a master is liable for the torts of its
7 servants if the servant's tortious conduct was within the scope of their employment; and,
8 given that Defendants Ms. Teresa Marlino, MD and Ms. Cynthia Shultz, MD were acting
9 within their scope of employment in the role that they were intended to perform, and
10 because their actions served their masters, Defendants St. Luke's Hospital, Onsite
11 Neonatal, OBHG PA, and Mr. Jerry Hric, MD; said master Defendants are liable for the
12 actions of their servant Defendants Ms. Teresa Marlino, MD and Ms. Cynthia Shultz,
13 MD.

14 1061. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
15 conduct, including but not limited to, emotional and psychological distress, pain and
16 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
17 appropriate compensatory damages to account for PTSD therapies and other related
18 treatments as they have been and will continue to be necessary.

19 1062. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
20 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, & Ms. Cynthia Shultz, MD, Mr. Jerry
21 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
22 egregious violation of the Pennsylvania Statutory Law, and, since harm was actually
23 caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm

future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, & Mr. Jerry Hric, MD to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Statutory Law.

1063. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the Court sees appropriate either compensatory and/or punitive.

1064. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their statutory rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

VIII. § 28 Pa. Code, Newborn Care & Policies

Violation of Mother's Right to a Support Person while in a Hospital

Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD & Mr. Jerry Hric, MD

1065. *28 Pa. Code § 501.48* outlines policies and procedures for birth centers and hospitals.

1066. *28 Pa. Code § 501.48 (b)* states, "A support person for each mother shall be required."

1 1067. Plaintiff Mr. Smith was Plaintiff Mrs. Smith's support person, and was present
2 with her and Newborn baby J.A.S. in the NICU prior to when Mr. and Mrs. Smith were
3 ejected under armed escort from St. Luke's Hospital property.

4 1068. On or around 9pm on April 10th Plaintiff Mrs. Smith was allowed to reenter
5 Defendant St. Luke's Hospital under constant guard when she was reunited with
6 Newborn baby J.A.S. in the NICU.

7 1069. Mr. Smith was not allowed to accompany Plaintiff Mrs. Smith to Defendant St.
8 Luke's Hospital to be with his wife and Newborn baby son J.A.S. or else Defendant St.
9 Luke's Hospital would have Mr. Smith arrested as a trespasser.

10 1070. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
11 MD, Ms. Cynthia Shultz, MD expressly forbade Mrs. Smith from having a support
12 person present during a traumatic and anxiety ridden experience with her son Newborn
13 baby J.A.S.

14 1071. Grandparents of Newborn baby J.A.S. were denied entry to visit their newborn
15 baby grandson on the pretense that Plaintiff Mrs. Smith was not allowed to have visitors
16 accompany her in the NICU, not because of epidemiological concerns, but because the
17 Plaintiff's grandparents presented a "security risk" to the hospital and they too were
18 escorted off of St. Luke's Hospital property by guards.

19 1072. Upon information and belief, due to the fact that Plaintiff Mrs. Smith was denied a
20 support person for Newborn baby J.A.S., when Pennsylvania Law expressly directs that
21 one is required at all times, Defendants St. Luke's Hospital, Onsite Neonatal, OBHG
22 PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, violated 28 Pa. Code § 501.48.

1 1073. Upon information and belief, given that a master is liable for the torts of its
2 servants if the servant's tortious conduct was within the scope of their employment; and,
3 given that Defendants Ms. Teresa Marlino, MD and Ms. Cynthia Shultz, MD were acting
4 within their scope of employment in the role that they were intended to perform, and
5 because their actions served their masters, Defendants St. Luke's Hospital, Onsite
6 Neonatal, OBHG PA, and Mr. Jerry Hric, MD; said master Defendants are liable for the
7 actions of their servant Defendants Ms. Teresa Marlino, MD and Ms. Cynthia Shultz,
8 MD.

9 1074. Plaintiff Mrs. Smith suffered substantial harm as a result of Defendants' conduct,
10 including but not limited to, emotional and psychological distress, pain and suffering,
11 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
12 compensatory damages to account for PTSD therapies and other related treatments as
13 they have been and will continue to be necessary.

14 1075. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
15 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, & Ms. Cynthia Shultz, MD, Mr. Jerry
16 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
17 egregious violation of the Pennsylvania Statutory Law, and, since harm was actually
18 caused to the current Plaintiff Mrs. Smith, and since harm is likely to continue to harm
19 future postpartum mothers, and because the acts of the Defendants and their agents,
20 assigns, or employees callously disregarded the Plaintiff's rights in a reckless and
21 wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on
22 Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD,
23 Ms. Cynthia Shultz, MD, & Mr. Jerry Hric, MD to deter such Defendants from committing

1 to such conduct in the future which violates Commonwealth of Pennsylvania Statutory
2 Law.

3 1076. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
4 Court sees appropriate either compensatory and/or punitive.

5 1077. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered
6 any actual injury despite the deprivation of their statutory rights, the Plaintiff respectfully
7 requests a nominal judgment of \$1.00.

8 **IX. § 28 Pa. Code, Newborn Care & Policies**

9 Violation of Parent's Right to Implementation of a Care and Treatment Plan 10 for Drug-Dependent Newborns

11 Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
12 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
13 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
14 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
15 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
16 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
17 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
18 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", &
19 Mr. Jerry Hric, MD

1 1078. 28 Pa. Code § 137.21(b)(12) outlines policies and procedures for obstetrical
2 services for birth centers and hospitals:

3 (b) Obstetrical services policies and procedures shall include:

4 (12) Policies and procedures for the care and treatments of drug-
5 dependent newborns.

6 1079. Newborn baby J.A.S. did not test positive for any illegal methamphetamines, nor
7 did he exhibit signs or symptoms of methamphetamine withdrawal.

8 1080. Although, Plaintiff Mrs. Smith was accused of illegal methamphetamine use,
9 Defendants St. Luke's, Onsite Neonatal, et al., did not implement a policy and
10 procedures for the care and treatment of allegedly drug-dependent Newborn baby
11 J.A.S.

12 1081. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
13 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
14 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
15 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
16 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
17 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
18 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
19 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD did not
20 implement the legally mandated policies and procedures for treatment of drug-
21 dependent newborns despite accusing Plaintiffs Mr. and Mrs. Smith of having a
22 newborn baby who was supposedly suffering abuse to such a degree that he needed to
23 be separated from his parents.

1 1082. Since Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
2 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
3 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
4 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
5 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
6 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
7 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
8 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, did not
9 implement policies and procedures for the care and treatment of allegedly drug-
10 dependent Newborn baby J.A.S. despite that Newborn baby J.A.S. was supposedly a
11 drug-dependent newborn, Defendants violated *28 Pa. Code § 137.21(b)(12)*.

12 1083. Upon information and belief, given that a master is liable for the torts of its
13 servants if the servant's tortious conduct was within the scope of their employment; and,
14 given that Defendants Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
15 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
16 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
17 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
18 MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
19 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team", were acting
20 within their scope of employment in the role that they were intended to perform, and
21 because their actions served their masters, Defendants St. Luke's Hospital, Onsite
22 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
23 Obstetrics & Gynecology Associates, and Mr. Jerry Hric, MD; said master Defendants

1 are liable for the actions of their servant Defendants Ms. Teresa Marlino, MD, Ms.
2 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
3 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
4 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,
5 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,
6 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital
7 Leadership Team”.

8 1084. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants’
9 conduct, including but not limited to, emotional and psychological distress, pain and
10 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
11 appropriate compensatory damages to account for PTSD therapies and other related
12 treatments as they have been and will continue to be necessary.

13 1085. Given the substantial wealth of the Defendants St. Luke’s Hospital, Onsite
14 Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s
15 Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz,
16 MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
17 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
18 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
19 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
20 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, “Hospital Leadership Team”, & Mr. Jerry
21 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
22 egregious violation of the Pennsylvania Statutory Law, and, since harm was actually
23 caused to the current Plaintiffs Mr. & Mrs. Smith, and since harm is likely to continue to

harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Statutory Law.

1086. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the Court sees appropriate either compensatory and/or punitive.

1087. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their statutory rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

X. § 28 Pa. Code, Newborn Care & Policies

Violation of Mother's Right to Professional Care

Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms.

1 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms.
2 Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr.
3 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
4 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
5 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
6 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD

7 1088. *28 Pa. Code § 501.46* outlines policies and procedures to ensure that all mothers
8 are treated with respect, dignity, privacy, and safety while in a birth center or hospital:

9 (a) The birth center shall have written policies and procedures to assure the
10 individual mother the right to dignity, privacy, and safety and shall include, but not
11 be limited to, the items listed in subsection (b).

12 (b) It is the right of every mother, or support person, to expect and receive:

13 (1) Good quality care and high professional standards that are continually
14 maintained and reviewed.

15 1089. Upon information and belief, Plaintiff Mrs. Smith, as a mother, was not treated
16 with good quality care and high professional standards, as evidenced by, but not limited
17 to, Defendants confronting sensitive family issues in a confrontational manner, treating
18 Mr. and Mrs. Smith in an abhorrent manner and spreading false rumors in medical
19 records, treating Mr. and Mrs. Smith like they were "bad people" for objecting to the type
20 of care demanded by St. Luke's Hospital for Newborn baby J.A.S., as well as, forcing a

1 family apart without good cause, in bad faith, and having Plaintiff mother ejected under
2 armed police escort from Defendant St. Luke's Hospital property under threat of arrest.

3 1090. Since Defendants St. Luke's Hospital, Onsite Neonatal, etc., by acting in a
4 manner unbecoming of the medical profession, by subjecting the Smith Family to
5 repeated humiliations and degradations, did act in an unprofessional manner, and
6 therefore Defendants violated *28 Pa. Code § 501.46(b)(1)*.

7 1091. Upon information and belief, given that a master is liable for the torts of its
8 servants if the servant's tortious conduct was within the scope of their employment; and,
9 given that Defendants Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
10 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
11 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
12 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
13 MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
14 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team", were acting
15 within their scope of employment in the role that they were intended to perform, and
16 because their actions served their masters, Defendants St. Luke's Hospital, Onsite
17 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
18 Obstetrics & Gynecology Associates, and Mr. Jerry Hric, MD; said master Defendants
19 are liable for the actions of their servant Defendants Ms. Teresa Marlino, MD, Ms.
20 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
21 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
22 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,
23 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,

1 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital
2 Leadership Team”.

3 1092. Plaintiffs Mrs. Smith suffered substantial harm as a result of Defendants’
4 conduct, including but not limited to, emotional and psychological distress, pain and
5 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
6 appropriate compensatory damages to account for PTSD therapies and other related
7 treatments as they have been and will continue to be necessary.

8 1093. Given the substantial wealth of the Defendants St. Luke’s Hospital, Onsite
9 Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s
10 Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz,
11 MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
12 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
13 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
14 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
15 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, “Hospital Leadership Team”, & Mr. Jerry
16 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
17 egregious violation of the Pennsylvania Statutory Law, and, since harm was actually
18 caused to the current Plaintiff Mrs. Smith, and since harm is likely to continue to harm
19 future postpartum mothers, and because the acts of the Defendants and their agents,
20 assigns, or employees callously disregarded the Plaintiff’s rights in a reckless and
21 wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on
22 Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, St. Luke’s Physicians
23 Group, Bethlehem Neonatal, St. Luke’s Obstetrics & Gynecology Associates, Ms.

1 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne
 2 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
 3 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD,
 4 Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr.
 5 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
 6 “Hospital Leadership Team”, & Mr. Jerry Hric, MD, to deter such Defendants from
 7 committing to such conduct in the future which violates Commonwealth of Pennsylvania
 8 Statutory Law.

9 1094. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
 10 Court sees appropriate either compensatory and/or punitive.

11 1095. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered
 12 any actual injury despite the deprivation of their statutory rights, the Plaintiffs
 13 respectfully request a nominal judgment of \$1.00.

14 **XI. § 28 Pa. Code, Newborn Care & Policies**

15 **Violation of Mother’s Right to Confidentiality, Anonymity, & Privacy**

16 **Mrs. Smith v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,**

17 **MD, Ms. Cynthia Shultz, MD & Mr. Jerry Hric, MD**

18 1096. 28 Pa. Code § 501.46 outlines policies and procedures to ensure that all mothers
 19 are treated with respect, dignity, privacy, and safety while in a birth center or hospital:

1 (a) The birth center shall have written policies and procedures to assure the
2 individual mother the right to dignity, privacy, and safety and shall include, but not
3 be limited to, the items listed in subsection (b).

4 (b) It is the right of every mother, or support person, to expect and receive:

5 (3) Confidentiality, anonymity, and privacy.

6 1097. Upon information and belief, Plaintiffs Mr. and Mrs. Smith, as support person and
7 mother respectively, were not treated with confidentiality, anonymity, and privacy, as
8 evidenced by, but not limited to, Defendants St. Luke's Hospital, Onsite Neonatal, and
9 OBHG PA, by not allowing Plaintiffs Mr. and Mrs. Smith to discuss medical treatment for
10 Newborn baby J.A.S. outside the presence of Defendants St. Luke's Hospital, Onsite
11 Neonatal, and OBHG PA, Mr. and Mrs. Smith's incident being known throughout many
12 departments not related with medical decision making at St. Luke's Hospital, and
13 Plaintiff Mrs. Smith being placed on 24-guard while in the NICU, with only a curtain
14 separating Mrs. Smith and Newborn baby J.A.S. from the hospital guards.

15 Since Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
16 MD, Ms. Cynthia Shultz, by acting in a manner inconsistent with confidentiality,
17 anonymity, and privacy in the medical profession violated *28 Pa. Code § 501.46(b)(3)*.

18 1098. Upon information and belief, given that a master is liable for the torts of its
19 servants if the servant's tortious conduct was within the scope of their employment; and,
20 given that Defendants Ms. Teresa Marlino, MD and Ms. Cynthia Shultz, MD were acting
21 within their scope of employment in the role that they were intended to perform, and
22 because their actions served their masters, Defendants St. Luke's Hospital, Onsite
23 Neonatal, OBHG PA, and Mr. Jerry Hric, MD; said master Defendants are liable for the

1 actions of their servant Defendants Ms. Teresa Marlino, MD and Ms. Cynthia Shultz,
2 MD.

3 1099. Plaintiff Mrs. Smith suffered substantial harm as a result of Defendants' conduct,
4 including but not limited to, emotional and psychological distress, pain and suffering,
5 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
6 compensatory damages to account for PTSD therapies and other related treatments as
7 they have been and will continue to be necessary.

8 1100. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
9 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, & Ms. Cynthia Shultz, MD, Mr. Jerry
10 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
11 egregious violation of the Pennsylvania Statutory Law, and, since harm was actually
12 caused to the current Plaintiff Mrs. Smith, and since harm is likely to continue to harm
13 future postpartum mothers, and because the acts of the Defendants and their agents,
14 assigns, or employees callously disregarded the Plaintiff's rights in a reckless and
15 wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on
16 Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD,
17 Ms. Cynthia Shultz, MD, & Mr. Jerry Hric, MD to deter such Defendants from committing
18 to such conduct in the future which violates Commonwealth of Pennsylvania Statutory
19 Law.

20 1101. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
21 Court sees appropriate either compensatory and/or punitive.

1102. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered any actual injury despite the deprivation of their statutory rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

XII. § 28 Pa. Code, Newborn Care & Policies

Violation of Mother and Support Person's Right to Respectful

& Dignified Treatment

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD

1103. 28 Pa. Code § 501.46 outlines policies and procedures to ensure that all mothers are treated with respect, dignity, privacy, and safety while in a birth center or hospital:

1 (a) The birth center shall have written policies and procedures to assure the
2 individual mother the right to dignity, privacy, and safety and shall include, but not
3 be limited to, the items listed in subsection (b).

4 (b) It is the right of every mother, or support person, to expect and receive:

5 (4) Respectful and dignified treatment at all times.

6 1104. Upon information and belief, Plaintiffs Mr. and Mrs. Smith, as support person and
7 mother respectively, were not treated with respect and dignity, as evidenced by, but not
8 limited to, Defendants St. Luke's Hospital, Onsite Neonatal, and OBHG PA, not allowing
9 Plaintiffs Mr. and Mrs. Smith to discuss medical treatment for Newborn baby J.A.S.
10 outside the presence of Defendant's agents, employees, or assigns, Mr. and Mrs.
11 Smith's incident being known throughout many departments not related with medical
12 decision making at St. Luke's Hospital, and Plaintiff Mrs. Smith being placed on 24-
13 guard while in the NICU with only a curtain separating Mrs. Smith and Newborn baby
14 J.A.S. from the hospital guards who also followed Mrs. Smith to and from the restroom,
15 confronting sensitive family issues in a confrontational manner, treating Plaintiffs Mr.
16 and Mrs. Smith in an abhorrent manner and spreading false rumors in medical records,
17 and treating Mr. and Mrs. Smith like they were "bad people" for objecting to the type of
18 care demanded by Defendants for Newborn baby J.A.S.

19 1105. Since Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
20 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
21 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
22 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,

1 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
2 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
3 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
4 Frack, Ms. Dawn Hoffman, “Hospital Leadership Team”,, by acting in a manner
5 inconsistent with respect and dignity in the medical profession by subjecting the Smith
6 Family to repeated humiliations and degradations, and in doing so, violated 28 Pa.
7 Code § 501.46(b)(4).

8 1106. Upon information and belief, given that a master is liable for the torts of its
9 servants if the servant’s tortious conduct was within the scope of their employment; and,
10 given that Defendants Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
11 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
12 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
13 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
14 MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
15 Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”, were acting
16 within their scope of employment in the role that they were intended to perform, and
17 because their actions served their masters, Defendants St. Luke’s Hospital, Onsite
18 Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s
19 Obstetrics & Gynecology Associates, and Mr. Jerry Hric, MD; said master Defendants
20 are liable for the actions of their servant Defendants Ms. Teresa Marlino, MD, Ms.
21 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
22 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
23 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,

1 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,
2 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital
3 Leadership Team”.

4 1107. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants’
5 conduct, including but not limited to, emotional and psychological distress, pain and
6 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
7 appropriate compensatory damages to account for PTSD therapies and other related
8 treatments as they have been and will continue to be necessary.

9 1108. Given the substantial wealth of the Defendants St. Luke’s Hospital, Onsite
10 Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s
11 Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz,
12 MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
13 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
14 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
15 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
16 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, “Hospital Leadership Team”, & Mr. Jerry
17 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
18 egregious violation of the Pennsylvania Statutory Law, and, since harm was actually
19 caused to the current Plaintiff Mrs. Smith, and since harm is likely to continue to harm
20 future postpartum mothers, and because the acts of the Defendants and their agents,
21 assigns, or employees callously disregarded the Plaintiff’s rights in a reckless and
22 wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on
23 Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, St. Luke’s Physicians

Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Statutory Law.

1109. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the Court sees appropriate either compensatory and/or punitive.

1110. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their statutory rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XIII. § 5100.53 Pa. Code, Patients' Bill of Rights

Violation of Right to Unrestricted and Private Communications

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD & Mr. Jerry Hric, MD, Northampton County, Officers Andrew Keyock and Thomas A. Smith, Corporal Kirk Harryn, & Chief

Daniel G. Pancoast

1 1111. *Pa. Code § 5100.53. Bill of Rights for Patients.* What follows are the subtitles to
2 this section of the PA Code: “YOU HAVE A RIGHT TO BE TREATED WITH DIGNITY
3 AND RESPECT [.]” and, “YOU SHALL RETAIN ALL CIVIL RIGHTS THAT HAVE NOT
4 BEEN SPECIFICALLY CURTAILED BY ORDER OF COURT[.]”⁴¹

5 1112. The *Pa. Code § 5100.53. Sec. 1 of the Bill of Rights for Patients* states that a
6 person has the right to unrestricted and private communication inside and outside this [a
7 medical] facility.

8 1113. On or around the night of Friday, April 9th, Plaintiffs Mr. and Mrs. Smith could not
9 speak in private about Defendant reporting them to Children and Youth Services
10 because at all times present from when Defendant Ms. Teresa Marino, MD, entered
11 Plaintiff Mrs. Smith’s postpartum hospital room, and agent, employee, or assign of at
12 least one of the Defendants remained with Plaintiffs until Mr. and Mrs. Smith were
13 forcibly ejected from the premises by the Defendant Northampton County, acting
14 through the Bethlehem Police Dept., there was always an agent, employee, or assign of
15 the hospital and/or a BPD police officer close enough to both Plaintiffs Mr. and Mrs.
16 Smith so that they could hear whatever conversation, comments, or utterances which
17 occurred between Plaintiffs Mr. & Mrs. Smith.

18 1114. On no less than four separate instances MS. Teresa Marino, MD was asked to
19 leave Plaintiff Mrs. Smith’s postpartum hospital room so that Mr. and Mrs. Smith could
20 discuss matters in private, and Ms. Teresa Marino, MD refused to respect that request
21 for privacy, only leaving when she had determined to do so.

⁴¹*Emphasis in original.*

1 1115. When attempting to call Monroe County CYS in private, Plaintiff Mrs. Smith was
2 followed by a police officer making it impossible for her to communicate confidentially
3 with Monroe County CYS.

4 1116. On or around April 10th-12th Plaintiff Mrs. Smith was solely allowed to return to
5 the NICU to be with Newborn baby J.A.S.; Mrs. Smith was not allowed any support
6 family or an advocat with her, including Mr. Smith.

7 1117. There were not any doors, but curtains separating Newborn baby J.A.S.'s NICU
8 unit from the hallway and adjacent nurses' station.

9 1118. Upon being allowed to return to the hospital a guard appointed by Defendant St.
10 Luke's Hospital was outside the curtains at all times, and a nurse was frequently at the
11 nurses' station adjacent to Newborn baby J.A.S.'s NICU unit, and both people were
12 within of earshot of all communications exchanged between Plaintiff Mrs. Smith and
13 anyone else.

14 1119. Based on information and belief, St. Luke's Hospital employees, agents, and/or
15 assigns were instructed to eavesdrop on Plaintiff Mrs. Smith for use in future
16 prosecution, and/or for purposes of intentionally attempting to once again, separate
17 Plaintiff Mrs. Smith from Newborn baby J.A.S.

18 1120. Based on information and belief, when a representative from Monroe County
19 CYS came to Newborn baby J.A.S.'s NICU unit to interrogate Plaintiff Mrs. Smith and
20 subject her to humiliating drug testing, the hospital caseworker was immediately outside
21 the curtains to the unit, where she, the security guard, and a nurse from the nurses'
22 station were all intentionally eavesdropping with an ear towards future prosecution of

1 Plaintiffs Mr. or Mrs. Smith, and/or to once again to separate Newborn baby J.A.S. from
2 his mother.

3 1121. Plaintiff Mrs. Smith attempted to make confidential phone calls at the end of a
4 hallway, which was away from the guard and nurses' station; however, the location was
5 also an active thoroughfare of hospital traffic in which anyone passing by could hear the
6 contents of Plaintiff Mrs. Smith's phone conversations.

7 1122. Plaintiff Mrs. Smith felt that she could not leave the NICU again for any reason
8 lest she be permanently separated from Newborn baby J.A.S. again; therefore, Plaintiff
9 Mrs. Smith could not leave the NICU to find a more private location in the hospital or
10 elsewhere.

11 1123. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
12 MD, Ms. Cynthia Shultz, MD & Mr. Jerry Hric, MD, Northampton County, Officers
13 Andrew Keyock and Thomas A. Smith, Corporal Kirk Harryn, and Chief Daniel G.
14 Pancoast acted intentionally to deprive Plaintiffs' of their statutory rights under the PA
15 Patient Bill of Rights, or acted in wanton, reckless disregard of those rights.

16 1124. At all times relevant Plaintiff Mrs. Smith's communications were restricted in what
17 she could say, and she was not provided any privacy by Defendant St. Luke's Hospital
18 or Defendant Northampton County, acting through the BPD.

19 1125. At all times relevant Plaintiff Mr. Smith's communications were restricted in what
20 he could say, and he was not provided any privacy by Defendant St. Luke's Hospital or
21 Defendant Northampton County, acting through the BPD.

22 1126. At all times relevant Plaintiffs Mr. and Mrs. Smith were not treated either with
23 dignity or respect in violation of the very title of the *PA Bill of Rights* itself.

1 1127. At no time did Plaintiffs agree to give up any rights, nor were any civil rights
2 specifically curtailed by the order of a court.

3 1128. Upon information and belief, given that a master is liable for the torts of its
4 servants if the servant's tortious conduct was within the scope of their employment; and,
5 given that Defendants Ms. Teresa Marlino, MD and Ms. Cynthia Shultz, MD were acting
6 within their scope of employment in the role that they were intended to perform, and
7 because their actions served their masters, Defendants St. Luke's Hospital, Onsite
8 Neonatal, OBHG PA, and Mr. Jerry Hric, MD; said master Defendants are liable for the
9 actions of their servant Defendants Ms. Teresa Marlino, MD and Ms. Cynthia Shultz,
10 MD.

11 1129. Upon information and belief, given that a master is liable for the torts of its
12 servants if the servant's tortious conduct was within the scope of their employment; and,
13 given that Defendant Officers Keyock and Smith were acting within their scope of
14 employment in the role that they were intended to perform, and because their actions
15 served their masters, Defendants Northampton County, Corporal Harryn, and Chief
16 Pancoast; said master Defendants are liable for the actions of their servant Defendant
17 Officers Andrew Keyock and Thomas A. Smith.

18 1130. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
19 conduct, including but not limited to, emotional and psychological distress, pain and
20 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
21 appropriate compensatory damages to account for PTSD therapies and other related
22 treatments as they have been and will continue to be necessary.

1 1131. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
2 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, & Mr. Jerry
3 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
4 egregious violation of the Pennsylvania Statutory Law, and, Defendants Northampton
5 County, Officers Andrew Keyock and Thomas A. Smith, Corporal Kirk Harryn, and Chief
6 Daniel G. Pancoast's egregious violations of legal obligations to accurately enforce the
7 law, and since harm was actually caused to the current Plaintiffs Mr. & Mrs. Smith, and
8 since harm is likely to continue to harm future postpartum families, and because the
9 acts of the Defendants and their agents, assigns, or employees callously disregarded
10 the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests
11 the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
12 OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD & Mr. Jerry Hric, MD,
13 Northampton County, Officers Andrew Keyock and Thomas A. Smith, Corporal Kirk
14 Harryn, and Chief Daniel G. Pancoast to deter such Defendants from committing to
15 such conduct in the future which violates Commonwealth of Pennsylvania Statutory
16 Law.

17 1132. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
18 Court sees appropriate either compensatory and/or punitive.

19 1133. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
20 suffered any actual injury despite the deprivation of their statutory rights, the Plaintiffs
21 respectfully request a nominal judgment of \$1.00.

22 **XIV. § 5100.53 Pa. Code, Patients' Bill of Rights**

*Violation of Right to Make a Complaint without Punitive Measures being
Leveled against Complainants*

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa
Marlino, MD, & Mr. Jerry Hric, MD

1134. *Pa. Code § 5100.53. Bill of Rights for Patients.* What follows are the subtitles to this section of the PA Code: “YOU HAVE A RIGHT TO BE TREATED WITH DIGNITY AND RESPECT [,]” and, “YOU SHALL RETAIN ALL CIVIL RIGHTS THAT HAVE NOT BEEN SPECIFICALLY CURTAILED BY ORDER OF COURT[.]”⁴²

1135. The *Pa. Code § 5100.53. Sec. 1(c) of the Bill of Rights for Patients* states that a person has the right to make complaints and to have one's complaints heard and adjudicated promptly.

1136. On or around the night of Friday, April 9th Plaintiffs Mr. and Mrs. Smith were accosted with accusations by Defendant St. Luke's Hospital, Onsite Neonatal, and OBHG PA, through its agent, employee, or assign Ms. Teresa Marlino, MD that Plaintiff Mrs. Smith had ingested illegal methamphetamine and that she had passed the deleterious effects of methamphetamine use on to her child Newborn baby J.A.S.

1137. Shortly after when Plaintiffs Mr. and Mrs. Smith complained that the assessment by Ms. Teresa Marlino, MD, was both unfounded, unfair, and untrue Plaintiffs were denied access to their child Newborn baby J.A.S. and were subsequently forcibly ejected from Defendant St. Luke's Hospital premises under threat of arrest.

⁴²*Emphasis in original.*

1 1138. At no point during the complaint did Plaintiffs Mr. or Mrs. Smith use abusive or
2 threatening language directed at anyone despite regular insults being hurled at Plaintiffs
3 Mr. and Mrs. Smith by Ms. Teresa Marlino, MD.

4 1139. If when a legal parent or guardian makes a reasonable complaint about the
5 nature of the treatment of their child, or about any unreasonable accusations levied
6 against themselves, they are then subject to losing custody of their child, there is no
7 actual mechanism to complain because the consequences of losing one's child are so
8 unconscionable.

9 1140. At all times relevant, Plaintiffs Mr. and Mrs. Smith had no functional way to make
10 a valid complaint to Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
11 Teresa Marlino, MD in violation the *Pa. Code § 5100.53. Sec. 1(c) of the Pa. Bill of*
12 *Rights for Patients.*

13 1141. At all times relevant Plaintiffs Mr. and Mrs. Smith were not treated either with
14 dignity or respect in violation of the very title of the *PA Bill of Rights* itself.

15 1142. At no time did Plaintiffs' agree to give up any rights, nor were any civil rights
16 specifically curtailed by the order of a court.

17 1143. Upon information and belief, given that a master is liable for the torts of its
18 servants if the servant's tortious conduct was within the scope of their employment; and,
19 given that Defendants Ms. Teresa Marlino, MD was acting within their scope of
20 employment in the role that they were intended to perform, and because their actions
21 served their masters, Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, and
22 Mr. Jerry Hric, MD; said master Defendants are liable for the actions of their servant
23 Defendant Ms. Teresa Marlino, MD.

1 1144. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
2 conduct, including but not limited to, emotional and psychological distress, pain and
3 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
4 appropriate compensatory damages to account for PTSD therapies and other related
5 treatments as they have been and will continue to be necessary.

6 1145. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
7 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, & Mr. Jerry Hric, MD, and therefore, their
8 ability to afford the appropriate training to avoid this egregious violation of the
9 Pennsylvania Statutory Law, and, since harm was actually caused to the current Plaintiff
10 Smith Family, and since harm is likely to continue to harm future postpartum families,
11 and because the acts of the Defendants and their agents, assigns, or employees
12 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff
13 respectfully requests the imposition of punitive damages on Defendants St. Luke's
14 Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, & Mr. Jerry Hric, MD to
15 deter such Defendants from committing to such conduct in the future which violates
16 Commonwealth of Pennsylvania Statutory Law.

17 1146. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
18 Court sees appropriate either compensatory and/or punitive.

19 1147. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
20 suffered any actual injury despite the deprivation of their statutory rights, the Plaintiff
21 respectfully requests a nominal judgment of \$1.00.

22 **XV. § 5100.53 Pa. Code, Patients' Bill of Rights**

23 **Violation of Right of Patients Ability to Handle their Own Affairs**

1 Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
 2 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
 3 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
 4 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
 5 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
 6 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
 7 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
 8 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", &
 9 Mr. Jerry Hric, MD

10 1148. *Pa. Code § 5100.53. Bill of Rights for Patients.* What follows are the subtitles to
 11 this section of the PA Code: "YOU HAVE A RIGHT TO BE TREATED WITH DIGNITY
 12 AND RESPECT [,]" and, "YOU SHALL RETAIN ALL CIVIL RIGHTS THAT HAVE NOT
 13 BEEN SPECIFICALLY CURTAILED BY ORDER OF COURT[.]"⁴³

14 1149. The *Pa. Code § 5100.53. Sec. 4 of the Bill of Rights for Patients* states that a
 15 person has the right to handle their own personal affairs including making contracts.

16 1150. Plaintiffs Mr. and Mrs. Smith were not allowed to care for their child as they saw
 17 fit from at least the moment Defendants took possession of Newborn baby J.A.S.⁴⁴ until
 18 Newborn baby J.A.S. was discharged from Defendant St. Luke's Hospital on April 12th,

⁴³*Emphasis in original.*

⁴⁴And possibly earlier depending on findings of fact concerning informed consent.

1 2021, which is a violation of Plaintiff Mr. and Mrs. Smith's right to handle their own
2 personal affairs including care of their newborn baby.

3 1151. Plaintiffs Mr. and Mrs. Smith were not allowed to seek a second medical opinion
4 for Newborn baby J.A.S. at an alternate location, which deprived Plaintiffs Mr. and Mrs.
5 Smith of the right to handle their own personal affairs, including determining where
6 medical treatment is appropriate for their newborn child.

7 1152. Defendant St. Luke's Hospital made it clear, that in no uncertain terms would
8 Plaintiff Mrs. Smith be allowed to leave the hospital with Newborn baby J.A.S. until the
9 hospital was satisfied that Mrs. Smith had a follow-up appointment scheduled for
10 Newborn baby J.A.S., which deprived Plaintiff Mrs. Smith of her right to handle her own
11 affairs, including choosing future medical care and providers for her child.

12 1153. Defendant St. Luke's Hospital forced Plaintiff Mrs. Smith to sign a contract
13 attesting to factual untruths concerning her bracelet matching Newborn baby J.A.S.'s
14 (they no longer did because Defendant St. Luke's Hospital had them separated for at
15 least 24 hrs.), which deprived Plaintiff Mrs. Smith of her right to contract by placing her
16 under the duress that she would not be able to take Newborn baby J.A.S. home unless
17 she signed said paperwork which did not conform to observable reality.

18 1154. Given the above enumerated instances of conduct, Defendants Mr. & Mrs. Smith
19 v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group,
20 Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa
21 Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz,
22 MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert,
23 MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms.

1 Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr.
2 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
3 “Hospital Leadership Team”, & Mr. Jerry Hric, MD are in violation the *Pa. Code*
4 *§ 5100.53. Sec. 4 of the Pa. Bill of Rights for Patients.*

5 1155. At all times relevant Plaintiffs Mr. and Mrs. Smith were not treated either with
6 dignity or respect in violation of the very title of the *PA Bill of Rights* itself.

7 1156. At no time did Plaintiffs agree to give up any rights, nor were any civil rights
8 specifically curtailed by the order of a court.

9 1157. Upon information and belief, given that a master is liable for the torts of its
10 servants if the servant’s tortious conduct was within the scope of their employment; and,
11 given that Defendants Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
12 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
13 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
14 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
15 MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
16 Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”, were acting
17 within their scope of employment in the role that they were intended to perform, and
18 because their actions served their masters, Defendants St. Luke’s Hospital, Onsite
19 Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s
20 Obstetrics & Gynecology Associates, and Mr. Jerry Hric, MD; said master Defendants
21 are liable for the actions of their servant Defendants Ms. Teresa Marlino, MD, Ms.
22 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
23 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah

1 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,
2 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,
3 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital
4 Leadership Team”.

5 1158. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants’
6 conduct, including but not limited to, emotional and psychological distress, pain and
7 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
8 appropriate compensatory damages to account for PTSD therapies and other related
9 treatments as they have been and will continue to be necessary.

10 1159. Given the substantial wealth of the Defendants St. Luke’s Hospital, Onsite
11 Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s
12 Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz,
13 MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
14 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
15 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
16 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
17 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, “Hospital Leadership Team”, & Mr. Jerry
18 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
19 egregious violation of the Pennsylvania Statutory Law, and, since harm was actually
20 caused to the current Plaintiffs Mr. & Mrs. Smith, and since harm is likely to continue to
21 harm future postpartum families, and because the acts of the Defendants and their
22 agents, assigns, or employees callously disregarded the Plaintiff’s rights in a reckless
23 and wanton manner, the Plaintiff respectfully requests the imposition of punitive

damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Statutory Law.

1160. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the Court sees appropriate either compensatory and/or punitive.

1161. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their statutory rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XVI. § 5100.53 Pa. Code, Patients' Bill of Rights

Violation of Parents' Right to Participate in Treatment Plans

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn

1 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
 2 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
 3 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
 4 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", &
 5 Mr. Jerry Hric, MD

6 1162. *Pa. Code § 5100.53. Bill of Rights for Patients.* What follows are the subtitles to
 7 this section of the PA Code: "YOU HAVE A RIGHT TO BE TREATED WITH DIGNITY
 8 AND RESPECT [,]" and, "YOU SHALL RETAIN ALL CIVIL RIGHTS THAT HAVE NOT
 9 BEEN SPECIFICALLY CURTAILED BY ORDER OF COURT[.]"⁴⁵

10 1163. The *Pa. Code § 5100.53. Sec. 5 of the Bill of Rights for Patients* states that a
 11 person has the right to participate in the review of their treatment plan.

12 1164. Since a newborn baby cannot consent to its own treatment plan, it is up to the
 13 legal parent or guardian to have the right to participate in a newborn's treatment plan.

14 1165. Based upon information and belief, Newborn baby J.A.S.'s doctors' were never
 15 honest about what they were treating Newborn baby J.A.S. for, including but not limited
 16 to suspicions of methamphetamine withdrawal.

17 1166. Based upon information and belief, Newborn baby J.A.S. was being erroneously
 18 treated for ailments, conditions, diagnoses, or medical complications which he did not
 19 have so that Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
 20 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
 21 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,

⁴⁵*Emphasis in original.*

1 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
2 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
3 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
4 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
5 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, could
6 deny Plaintiffs Mr. and Mrs. Smith access to Newborn baby J.A.S. by physically taking
7 him to the NICU despite Plaintiffs Mr. and Mrs. Smith requesting that all treatment be
8 done in Mrs. Smith's postpartum hospital room; and, in this fashion Defendants St.
9 Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
10 Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms.
11 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
12 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
13 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,
14 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,
15 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership
16 Team", & Mr. Jerry Hric, MD, took over complete control of Newborn baby J.A.S.'s
17 treatment plan.

18 1167. Even in the unlikely event that it could be established that Plaintiffs Mr. and Mrs.
19 Smith participated in Newborn baby J.A.S.'s treatment plan to some extent, whatever
20 that extent was, was terminated when Defendant St. Luke's Hospital forcibly ejected
21 Plaintiffs Mr. and Mrs. Smith from the premises on Friday, April 10th, 2021 because
22 Plaintiffs Mr. and Mrs. Smith no longer were allowed contact with their newborn child,
23 and therefore had no way to consent or deny any treatment.

1 1168. When being forcibly ejected from Defendant St. Luke's Hospital, Plaintiff Mrs.
2 Smith requested that she at least be able to call the hospital about updates on her child,
3 and Mrs. Smith was flatly told by Dr. Shultz, "No"; furthering the assertion that neither
4 Plaintiff Mr. nor Mrs. Smith could participate in any meaningful way with their newborn
5 baby child's treatment plan.

6 1169. The enumerated instances conduct attributed to Defendants St. Luke's Hospital,
7 Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St.
8 Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M.
9 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb,
10 MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe,
11 MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr.
12 Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert
13 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr.
14 Jerry Hric, MD, are in violation the *Pa. Code § 5100.53. Sec. 5 of the Pa. Bill of Rights*
15 *for Patients*.

16 1170. At all times relevant Mr. and Mrs. Smith were not treated either with dignity or
17 respect in violation of the very title of the *PA Bill of Rights* itself.

18 1171. At no time did Plaintiffs agree to give up any rights, nor were any civil rights
19 specifically curtailed by the order of a court.

20 1172. Upon information and belief, given that a master is liable for the torts of its
21 servants if the servant's tortious conduct was within the scope of their employment; and,
22 given that Defendants Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
23 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn

1 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
2 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
3 MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
4 Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”, were acting
5 within their scope of employment in the role that they were intended to perform, and
6 because their actions served their masters, Defendants St. Luke’s Hospital, Onsite
7 Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s
8 Obstetrics & Gynecology Associates, and Mr. Jerry Hric, MD; said master Defendants
9 are liable for the actions of their servant Defendants Ms. Teresa Marlino, MD, Ms.
10 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
11 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
12 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,
13 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,
14 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital
15 Leadership Team”.

16 1173. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants’
17 conduct, including but not limited to, emotional and psychological distress, pain and
18 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
19 appropriate compensatory damages to account for PTSD therapies and other related
20 treatments as they have been and will continue to be necessary.

21 1174. Given the substantial wealth of the Defendants St. Luke’s Hospital, Onsite
22 Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s
23 Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz,

1 MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
2 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
3 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
4 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
5 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry
6 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
7 egregious violation of the Pennsylvania Statutory Law, and, since harm was actually
8 caused to the current Plaintiffs Mr. & Mrs. Smith, and since harm is likely to continue to
9 harm future postpartum families, and because the acts of the Defendants and their
10 agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless
11 and wanton manner, the Plaintiff respectfully requests the imposition of punitive
12 damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
13 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
14 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
15 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
16 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
17 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
18 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
19 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, to deter
20 such Defendants from committing to such conduct in the future which violates
21 Commonwealth of Pennsylvania Statutory Law.

22 1175. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
23 Court sees appropriate either compensatory and/or punitive.

1176. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their statutory rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XVII. § 5100.53 Pa. Code, Patients' Bill of Rights

Violation of Right to Treatment in the Least Restrictive Setting within the Facility

Newborn baby J.A.S. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD

1177. Pa. Code § 5100.53. Bill of Rights for Patients. What follows are the subtitles to this section of the PA Code: "YOU HAVE A RIGHT TO BE TREATED WITH DIGNITY

1 AND RESPECT [,]" and, "YOU SHALL RETAIN ALL CIVIL RIGHTS THAT HAVE NOT
2 BEEN SPECIFICALLY CURTAILED BY ORDER OF COURT[.]"⁴⁶

3 1178. The *Pa. Code § 5100.53. Sec. 6 of the Bill of Rights for Patients* states that a
4 person has the right to receive treatment in the least restrictive setting within the facility
5 necessary to accomplish the treatment goals.

6 1179. Based upon information and belief, Plaintiff Newborn baby J.A.S.'s doctors' were
7 never honest about what they were treating Plaintiff Newborn baby J.A.S. for, including
8 but not limited to suspicions of methamphetamine withdrawal.

9 1180. Based upon information and belief, Plaintiff Newborn baby J.A.S. was being
10 erroneously treated for ailments, conditions, diagnoses, or medical complications which
11 he did not have so that Defendants could deny Mr. and Mrs. Smith access to Plaintiff
12 Newborn baby J.A.S. by physically taking him to the NICU despite Mr. and Mrs. Smith
13 requesting that all treatment be done in Mrs. Smith's postpartum hospital room, and in
14 this fashion Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
15 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
16 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
17 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
18 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
19 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
20 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
21 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, took over
22 complete control of Plaintiff Newborn baby J.A.S.'s treatment plan.

⁴⁶*Emphasis in original.*

1 1181. Based upon information and belief, there was no cause to place Plaintiff
2 Newborn baby J.A.S. in the neonatal NICU when the exact same treatments and
3 observations conducted could be done in Mrs. Smith's postpartum hospital room.

4 1182. Defendants, by denying Mr. and Mrs. Smith to have Plaintiff Newborn baby
5 J.A.S. treated in Mrs. Smith's postpartum hospital room despite the fact that Newborn
6 baby J.A.S. did not require treatment elsewhere violated Plaintiff Newborn baby J.A.S.'s
7 right to have care in the least restrictive setting where he could have remained in and
8 around the comfort and love of his parents.

9 1183. The enumerated instances of conduct are attributed to Defendant St. Luke's
10 Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
11 Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms.
12 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
13 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
14 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,
15 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,
16 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership
17 Team", & Mr. Jerry Hric, MD, are in violation the *Pa. Code § 5100.53. Sec. 6 of the Pa.*
18 *Bill of Rights for Patients.*

19 1184. At all times relevant, Plaintiff Newborn baby J.A.S. was not treated either with
20 dignity or respect in violation of the very title of the *PA Bill of Rights* itself.

21 1185. At no time did Plaintiff's legal parents agree to give up any of Newborn baby
22 J.A.S.'s rights, nor were any civil rights specifically curtailed by the order of a court.

1 1186. Upon information and belief, given that a master is liable for the torts of its
2 servants if the servant's tortious conduct was within the scope of their employment; and,
3 given that Defendants Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
4 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
5 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
6 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
7 MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
8 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team", were acting
9 within their scope of employment in the role that they were intended to perform, and
10 because their actions served their masters, Defendants St. Luke's Hospital, Onsite
11 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
12 Obstetrics & Gynecology Associates, and Mr. Jerry Hric, MD; said master Defendants
13 are liable for the actions of their servant Defendants Ms. Teresa Marlino, MD, Ms.
14 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
15 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
16 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,
17 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,
18 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital
19 Leadership Team".

20 1187. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
21 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
22 Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz,
23 MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.

1 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
2 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
3 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
4 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry
5 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
6 egregious violation of the Pennsylvania Statutory Law, and, since harm was actually
7 caused to the current Plaintiff Newborn baby J.A.S., and since harm is likely to continue
8 to harm future newborns, and because the acts of the Defendants and their agents,
9 assigns, or employees callously disregarded the Plaintiff's rights in a reckless and
10 wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on
11 Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians
12 Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms.
13 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne
14 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
15 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD,
16 Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr.
17 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
18 "Hospital Leadership Team", & Mr. Jerry Hric, MD, to deter such Defendants from
19 committing to such conduct in the future which violates Commonwealth of Pennsylvania
20 Statutory Law.

21 1188. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
22 Court sees appropriate either compensatory and/or punitive.

1189. In the unlikely event that the jury does not find that Plaintiff Newborn baby J.A.S. suffered any actual injury despite the deprivation of their statutory rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

XVIII. § 5100.53 Pa. Code, Patients’ Bill of Rights

Violation of Right to be Discharged When Care is No Longer Required

Smith, et al. v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, “Hospital Leadership Team”, & Mr. Jerry Hric, MD

1190. *Pa. Code § 5100.53*. Bill of Rights for Patients. What follows are the subtitles to this section of the PA Code: “YOU HAVE A RIGHT TO BE TREATED WITH DIGNITY AND RESPECT [.]” and, “YOU SHALL RETAIN ALL CIVIL RIGHTS THAT HAVE NOT BEEN SPECIFICALLY CURTAILED BY ORDER OF COURT[.]”⁴⁷

⁴⁷ *Emphasis in original.*

1 1191. The *Pa. Code § 5100.53. Sec. 7 of the Bill of Rights for Patients* states that a
2 person has the right to be discharged from the facility as soon as one no longer needs
3 care and treatment.

4 1192. Plaintiff Mrs. Smith called Defendant St. Luke's Hospital before her admission to
5 ask about COVID-19 restrictions related to her giving birth at Defendant St. Luke's
6 Hospital.

7 1193. When Plaintiff Mrs. Smith called, she asked specifically how long the turn-around
8 for giving birth in a St. Luke's Hospital would be during the COVID-19 pandemic.

9 1194. The current authorized agent, employee, or assign of the Defendant St. Luke's
10 could not give a valid answer, and requested to return Plaintiff Mrs. Smith's call at a
11 later time, so that Mrs. Smith could receive an accurate answer.

12 1195. A different authorized agent, employee, or assign of Defendant St. Luke's
13 Hospital returned Plaintiff Mrs. Smith's call and gave Mrs. Smith an expected turn-
14 around time of 24 hours from the time of the birth.

15 1196. Upon information and belief, in Plaintiff Mrs. Smith's intake paperwork from the
16 triage the total time Plaintiff Mrs. Smith was expected in be in the hospital with Newborn
17 baby J.A.S. was more than two midnights, but less than three midnights.

18 1197. Plaintiffs Mr. and Mrs. Smith observed that Plaintiff Newborn baby J.A.S.'s birth
19 was the easiest to endure yet of their children, and was not fraught with complication for
20 either Mrs. Smith or Newborn baby J.A.S.

21 1198. Plaintiffs Mr. and Mrs. Smith requested that she and Plaintiff Newborn baby
22 J.A.S. be released in the twenty-four-hour time period initially quoted to Mrs. Smith
23 when she contacted Defendant St. Luke's Hospital before arriving.

1 1199. Plaintiffs Mr. and Mrs. Smith cited to doctors that they had concerns about
2 COVID-19 being in the hospital and that they would like to take Plaintiff Newborn baby
3 J.A.S. home as soon as practicable.

4 1200. Plaintiffs Mr. and Mrs. Smith concerns were literally met with silence by
5 Defendants St. Luke's Hospital's representatives, including, but not limited to Ms.
6 Chaminie Wheeler, DO, when the two present doctors did not address COVID-19
7 concerns and instead shifted the conversation to Newborn baby J.A.S.'s breathing.

8 1201. Upon information and belief, Plaintiff Newborn baby J.A.S. did not have any
9 complications following his birth, including complications with his lungs or any
10 associated breathing issues.

11 1202. Upon information and belief, the doctors present in Plaintiff Mrs. Smith's
12 postpartum hospital room acted to intentionally separate Plaintiff Newborn baby J.A.S.
13 from Plaintiffs Mr. and Mrs. Smith.

14 1203. At all times relevant, Plaintiffs Mr. and Mrs. Smith disagreed with the diagnosis
15 that Plaintiff Newborn baby J.A.S. spontaneously developed breathing issues after 12
16 hours of birth and having already been examined by several doctors, nurses, and other
17 hospital staff.

18 1204. Plaintiffs Mr. and Mrs. Smith's request to discharge Plaintiff Newborn baby J.A.S.
19 was denied by Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
20 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
21 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
22 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
23 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.

1 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.

2 Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla

3 Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD.

4 1205. Since Plaintiffs Mr. and Mrs. Smith's consent was denied and Plaintiff Newborn

5 baby J.A.S. was taken from them, and because Newborn baby J.A.S. did not require

6 any further care or treatment, Defendants violated *Pa. Code § 5100.53. Sec. 7* of the

7 *Bill of Rights for Patients* which states that a person has the right to be discharged from

8 the facility as soon as you no longer need care and treatment.

9 1206. At all times relevant, neither Plaintiffs Mr. and Mrs. Smith, nor Plaintiff Newborn

10 baby J.A.S. was treated either with dignity or respect in violation of the very title of the

11 *PA Bill of Rights* itself.

12 1207. At no time did Plaintiffs Mr. and Mrs. Smith, Newborn baby J.A.S.'s legal parents

13 agree to give up any of Plaintiff Newborn baby J.A.S.'s rights, nor were any civil rights

14 specifically curtailed by the order of a court.

15 1208. Upon information and belief, given that a master is liable for the torts of its

16 servants if the servant's tortious conduct was within the scope of their employment; and,

17 given that Defendants Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick

18 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn

19 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth

20 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,

21 MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.

22 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team", were acting

23 within their scope of employment in the role that they were intended to perform, and

1 because their actions served their masters, Defendants St. Luke's Hospital, Onsite
2 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
3 Obstetrics & Gynecology Associates, and Mr. Jerry Hric, MD; said master Defendants
4 are liable for the actions of their servant Defendants Ms. Teresa Marlino, MD, Ms.
5 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
6 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
7 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,
8 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,
9 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital
10 Leadership Team".

11 1209. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
12 conduct, including but not limited to, emotional and psychological distress, pain and
13 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
14 appropriate compensatory damages to account for PTSD therapies and other related
15 treatments as they have been and will continue to be necessary.

16 1210. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
17 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
18 Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz,
19 MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
20 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
21 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
22 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
23 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry

Hric, MD, and therefore, their ability to afford the appropriate training to avoid this egregious violation of the Pennsylvania Statutory Law, and, since harm was actually caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Statutory Law.

1211. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the Court sees appropriate either compensatory and/or punitive.

1212. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their statutory rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

XIX. § 5100.53 Pa. Code, Patients' Bill of Rights

Violation of Right to Not Be Subjected to any Harsh or Unusual Treatment

Smith, et al. v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, St. Luke’s Physicians
Group, Bethlehem Neonatal, St. Luke’s Obstetrics & Gynecology Associates, Ms.
Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms.
Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr.
Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
Frack, Ms. Dawn Hoffman, “Hospital Leadership Team”, Mr. Jerry Hric, MD,
Northampton County, Officer Andrew Keyock, Officer Thomas A. Smith, Corporal
Kirk Harryn, & Chief Daniel G. Pancoast

1213. *Pa. Code § 5100.53. Bill of Rights for Patients.* What follows are the subtitles to this section of the PA Code: “YOU HAVE A RIGHT TO BE TREATED WITH DIGNITY AND RESPECT [,]” and, “YOU SHALL RETAIN ALL CIVIL RIGHTS THAT HAVE NOT BEEN SPECIFICALLY CURTAILED BY ORDER OF COURT[.]”⁴⁸

1214. The *Pa. Code § 5100.53. Sec. 8 of the Bill of Rights for Patients* states that a person has the right not to be subjected to any harsh or unusual treatment.

1215. The term ‘unusual’ in *Pa. Code § 5100.53. Sec. 8 of the Bill of Rights for Patients* does not relate to the frequency at which an institution commits an offense, but rather,

⁴⁸*Emphasis in original.*

1 the term 'unusual' relates to how acceptable the behavior is to the average rational
2 person because of how far the behavior deviates from socially acceptable norms.

3 1216. The term 'treatment' in *Pa. Code § 5100.53. Sec. 8 of the Bill of Rights for*
4 *Patients* does not necessarily relate to specific medical procedures for which 'treatment'
5 is required, but instead the term 'treatment' takes on a broader context which relates to
6 how defendants colloquially relate to plaintiffs in a clinical setting.

7 1217. Upon information and belief Plaintiffs' were routinely subjected to harsh and
8 unusual treatment, including but not limited to, (1) being regularly drug tested without
9 consent; (2) being guarded by hospital security as if suspected of criminal behavior or
10 intent; (3) being guarded by BPD police when using the restroom; (4) parents being
11 separated from their newborn baby without good faith on the part of Defendants; (5)
12 being accosted and outright disbelieved by local police; (6) being threatened without
13 cause with arrest for trespassing; (7) having false rumors spread in medical records that
14 Plaintiff Mrs. Smith ingested methamphetamine; (8) constant hostility on the part of
15 Defendants; (9) being separated by hospital security from a newborn baby without
16 explanation; (10) having no privacy to discuss stressful situations; (11) being verbally
17 accosted by hospital staff with accusations of child abuse and/or neglect; (12) forcing
18 the Plaintiff Smith Family to undergo the shame of being perceived as
19 methamphetamine addicts.

20 1218. Since the aforementioned allegations in the previous statement all relate to
21 specific instances of being treated harshly, and such treatment was unusual in that it
22 deviates from socially accepted norms for the reasonable treatment of parents with a
23 newborn child in a hospital, as well, treatment in the aforementioned allegations relates

1 not to a specific medical procedure, but to how the defendants were colloquially treated
2 by hospital staff and local police, Defendants St. Luke's Hospital, Onsite Neonatal,
3 OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics &
4 Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr.
5 Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
6 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
7 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
8 MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
9 Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", Mr. Jerry Hric, MD,
10 Northampton County, Officer Andrew Keyock, Officer Thomas A. Smith,
11 Corporal Kirk Harryn, & Chief Daniel G. Pancoast, violated *Pa. Code § 5100.53. Sec. 8*
12 *of the Bill of Rights for Patients.*

13 1219. At all times relevant, neither Plaintiffs Mr. and Mrs. Smith, or Plaintiff Newborn
14 baby J.A.S. were not treated either with dignity or respect in violation of the very title of
15 the *PA Bill of Rights* itself.

16 1220. At no time did Plaintiffs, Mr. and Mrs. Smith, Newborn baby J.A.S.'s legal parents
17 agree to give up any of Plaintiff Newborn baby J.A.S.'s civil rights, nor were any civil
18 rights specifically curtailed by the order of a court.

19 1221. Upon information and belief, given that a master is liable for the torts of its
20 servants if the servant's tortious conduct was within the scope of their employment; and,
21 given that Defendants Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
22 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
23 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth

1 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
2 MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
3 Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”, were acting
4 within their scope of employment in the role that they were intended to perform, and
5 because their actions served their masters, Defendants St. Luke’s Hospital, Onsite
6 Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem Neonatal, St. Luke’s
7 Obstetrics & Gynecology Associates, and Mr. Jerry Hric, MD; said master Defendants
8 are liable for the actions of their servant Defendants Ms. Teresa Marlino, MD, Ms.
9 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
10 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
11 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,
12 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,
13 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital
14 Leadership Team”.

15 1222. Upon information and belief, given that a master is liable for the torts of its
16 servants if the servant’s tortious conduct was within the scope of their employment; and,
17 given that Defendants Officer Andrew Keyock, Officer Thomas A. Smith, Corporal Kirk
18 Harryn, and Chief Daniel G. Pancoast were acting within their scope of employment in
19 the role that they were intended to perform, and because their actions served their
20 master, Defendants Northampton County; said master Defendants are liable for the
21 actions of their servant Defendants Officer Andrew Keyock, Officer Thomas A. Smith,
22 Corporal Kirk Harryn, and Chief Daniel G. Pancoast.

1 1223. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
2 conduct, including but not limited to, emotional and psychological distress, pain and
3 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
4 appropriate compensatory damages to account for PTSD therapies and other related
5 treatments as they have been and will continue to be necessary.

6 1224. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
7 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
8 Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz,
9 MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
10 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
11 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
12 Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
13 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry
14 Hric, MD, and therefore, their ability to afford the appropriate training to avoid this
15 egregious violation of the Pennsylvania Statutory Law, and Defendants Northampton
16 County, Officers Andrew Keyock and Thomas A. Smith, Corporal Kirk Harryn, and Chief
17 Daniel G. Pancoast's egregious violations of legal obligations to accurately enforce the
18 law, and, since harm was actually caused to the current Plaintiff Smith Family, and
19 since harm is likely to continue to harm future postpartum families, and because the
20 acts of the Defendants and their agents, assigns, or employees callously disregarded
21 the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests
22 the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
23 OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics &

Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership Team", & Mr. Jerry Hric, MD, Officer Andrew Keyock, Officer Thomas A. Smith, Corporal Kirk Harryn, and Chief Daniel G. Pancoast to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Statutory Law.

1225. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the Court sees appropriate either compensatory and/or punitive.

1226. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their statutory rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XX. § 5100.14 Pa. Code, Patients' Bill of Rights

Violation of Right to Appeal

Smith, et al. v. St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

1227. The *Pa. Code Section 5100.14*, defines a patient's right to appeal a hospital's decisions as follows:

1 1228. (a) Each facility shall have a clearly defined appeal system through which any
2 patient who wishes to voice objections concerning his treatment shall be heard and
3 have objections determined.

4 1229. (b) Each facility shall monitor the appeal system to see that it works properly
5 and records shall be maintained for review for certification and licensure and for
6 Departmental review in order to investigate any complaint.

7 1230. (c) All patients shall be advised of such system and be encouraged to use it
8 when they believe their treatment plan is not necessary or appropriate to their needs.

9 1231. Upon information and belief, Defendant St. Luke's Hospital, and its agents,
10 employee, and assigns do not have a system by which decisions made by medical staff,
11 agents, employees, or assigns of the Defendant hospital can be appealed.

12 1232. Upon information and belief, Defendant St. Luke's Hospital appeals system, if St.
13 Luke's Hospital does have an appeal system in place, it is not properly monitored.

14 1233. Upon information and belief, Defendant St. Luke's Hospital appeals system, if St.
15 Luke's Hospital does have an appeal system in place, it is not properly maintained.

16 1234. Upon information and belief, Plaintiffs Mr. and Mrs. Smith were not ever informed
17 of the presence of an appeal system, and, did not have access to it when they believed
18 that the treatment plans for Plaintiffs Mrs. Smith or Newborn baby J.A.S. were not
19 necessary or appropriate to their needs.

20 1235. Upon information and belief, since Defendant St. Luke's Hospital does not have
21 an appeal system, or if it does, misappropriates or withholds its use through its agents,
22 employees, or assigns, Defendants Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,

1 Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team,” and violates
2 the *Pa. Code Section 5100.14 (a)* by not having an appeals process in place.

3 1236. Upon information and belief, since Defendant St. Luke’s Hospital does not
4 properly monitor its appeals system, if it does indeed have one, which violates the *Pa.*
5 *Code Section 5100.14 (b)* by not properly monitoring its own appeals system.

6 1237. Upon information and belief, since Defendant St. Luke’s Hospital did not make
7 Plaintiffs Mr. or Mrs. Smith aware of an appeals process, and were not encouraged to
8 use it when they felt that their treatment plan or their child’s newborn baby J.A.S.
9 treatment plan was inadequate or inappropriate, Defendant St. Luke’s Hospital violated
10 the *Pa. Code Section 5100.14 (c)* by not bringing awareness to a potential appeals
11 process in order that Plaintiffs Mr. & Mrs. Smith could address issues when they felt the
12 treatment in place was not necessary or appropriate.

13 1238. Upon information and belief, given that a master is liable for the torts of its
14 servants if the servant’s tortious conduct was within the scope of their employment; and,
15 given that Defendants Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
16 Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”, were acting within their
17 scope of employment in the role that they were intended to perform, and because their
18 actions served their masters, Defendants St. Luke’s Hospital; said master Defendants
19 are liable for the actions of their servant Defendants Mr. Steve Lanshe, Esq., Mr. Robert
20 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership
21 Team”.

22 1239. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants’
23 conduct, including but not limited to, emotional and psychological distress, pain and

1 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
2 appropriate compensatory damages to account for PTSD therapies and other related
3 treatments as they have been and will continue to be necessary.

4 1240. Given the substantial wealth of the Defendants St. Luke's Hospital, Mr. Steve
5 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital
6 Leadership Team", & Mr. Jerry Hric, MD, and therefore, their ability to afford the
7 appropriate training to avoid this egregious violation of the Pennsylvania Statutory Law,
8 and, since harm was actually caused to the current Plaintiff Smith Family, and since
9 harm is likely to continue to harm future postpartum families, and because the acts of
10 the Defendants and their agents, assigns, or employees callously disregarded the
11 Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the
12 imposition of punitive damages on Defendants St. Luke's Hospital, Mr. Steve Lanshe,
13 Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital
14 Leadership Team", & Mr. Jerry Hric, MD, to deter such Defendants from committing to
15 such conduct in the future which violates Commonwealth of Pennsylvania Statutory
16 Law.

17 1241. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
18 Court sees appropriate either compensatory and/or punitive.

19 1242. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
20 any actual injury despite the deprivation of their statutory rights, the Plaintiff respectfully
21 requests a nominal judgment of \$1.00.

22 **XXI. § 5100.52 Pa. Code, Patients' Bill of Rights**

23 **Violation of Receiving a Manual of Rights**

1 Mr. & Mrs. Smith v. St. Luke's Hospital

2 1243. The *Pa. Code § 5100.52*. Is a statement of principle on the availability of
3 information to patients. As follows:

4 1244. (a) *Facilities*. Upon voluntary or involuntary admission to an inpatient facility,
5 each patient shall be given a copy of the summary statement of the Bill of Rights,
6 contained in § 5100.53 (relating to bill of rights for patients), Form MH-782, or the
7 patient rights pamphlet (PWPE # 605), published by the Department entitled *You Have*
8 *a Right to be Treated with Dignity and Respect*. Appended to each of these documents
9 shall be the names, addresses, and telephone numbers of legal and other available
10 advocacy services. Assistance in contacting a legal or other advocate shall be provided
11 by the facility to each patient upon request. The rights contained therein shall be
12 explained to the extent feasible to persons who cannot read or understand them. Within
13 72 hours of admission, the Manual of Rights, set forth in § 5100.54 (relating to manual
14 of rights for persons in treatment), or the Patient Rights Handbook (PWPE # 606),
15 entitled *Your Rights Are Assured*, shall be made available or given to each patient, and
16 the rights contained therein shall be explained to the extent feasible to persons who
17 cannot read or understand them. Additionally, a copy of either the Manual of Rights or
18 the Patient Rights Handbook (PWPE # 606) entitled *Your Rights Are Assured*, shall be
19 made available for each patient access in each patient living area.

20 1245. (b) *Current patients*. All current patients shall be given a copy of either the
21 Manual of Rights, or Patient Rights Handbook entitled *Your Rights Are Assured* (PWPE
22 # 606), as in subsection (a). Existing supplies of previously printed forms and manuals
23 may be utilized.

1 1246. Plaintiff Mrs. Smith was a patient of Defendant St. Luke's hospital and she should
2 have received the publications or their equivalent from St. Luke's as outlined in Section
3 (a).

4 1247. Upon information and belief, Mrs. Smith did not ever receive the publications or
5 their equivalent as outlined in Section (a)

6 1248. Newborn baby J.A.S. was a patient of Defendant St. Luke's Hospital and both of
7 his parents, Plaintiffs Mr. and Mrs. Smith should have received the publications or their
8 equivalent from Defendant St. Luke's Hospital as outlined in Section (a).

9 1249. Upon information and belief, neither Plaintiffs Mr. nor Mrs. Smith received the
10 publications or their equivalent as outlined in Section (a) upon the birth of Newborn
11 baby J.A.S.

12 1250. Upon information and belief, because neither Plaintiff Mrs. Smith for herself, nor
13 Plaintiffs Mr. and Mrs. Smith on behalf of their Newborn baby J.A.S. was given the
14 appropriate manuals or their equivalent, Defendant St. Luke's Hospital violated both
15 sections (a) and (b) of the *Pa. Code* § 5100.52.

16 1251. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
17 conduct, including but not limited to, emotional and psychological distress, pain and
18 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
19 appropriate compensatory damages to account for PTSD therapies and other related
20 treatments as they have been and will continue to be necessary.

21 1252. Given the substantial wealth of the Defendant St. Luke's Hospital, and therefore,
22 their ability to afford the appropriate training to avoid this egregious violation of the
23 Pennsylvania Statutory Law, and, since harm was actually caused to the current

1 Plaintiffs Mr. & Mrs. Smith, and since harm is likely to continue to harm future
 2 postpartum families, and because the acts of the Defendant and their agents, assigns,
 3 or employees callously disregarded the Plaintiff's rights in a reckless and wanton
 4 manner, the Plaintiff respectfully requests the imposition of punitive damages on
 5 Defendant St. Luke's Hospital to deter such Defendants from committing to such
 6 conduct in the future which violates Commonwealth of Pennsylvania Statutory Law.
 7 1253. Plaintiffs respectfully request from this Honorable Court a prayer for relief as the
 8 Court sees appropriate either compensatory and/or punitive.
 9 1254. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 10 any actual injury despite the deprivation of their statutory rights, the Plaintiff respectfully
 11 requests a nominal judgment of \$1.00.

12 **XXII. § 42 Pa. C. S. § 8343, Defamation - Libel I**

13 Newborn baby J.A.S. and Mrs. Smith v. St. Luke's Hospital, OBHG PA, & Ms. Teresa

14 Marlino, MD

15 1255. Under Pennsylvania defamation law, a communication will be considered
 16 defamatory if it "tends so to harm the reputation of [the complaining party] as to lower
 17 him in the estimation of the community or to deter third persons from associating or
 18 dealing with him."⁴⁹

⁴⁹*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

1 1256. In order for Plaintiffs to succeed in their claim, they must prove the following
2 elements⁵⁰.

- 3 (1) The defamatory character of the communication;
- 4 (2) Its publication by the defendant;
- 5 (3) Its application to the plaintiff;
- 6 (4) The understanding by the recipient of its defamatory meaning;
- 7 (5) The understanding by the recipient of it as intended to be applied to the plaintiff;
- 8 (6) Special harm resulting to the plaintiff from its publication; and
- 9 (7) Abuse of a conditionally privileged occasion.

10 1257. The Pennsylvania Supreme Court has abolished an “actual malice” standard and
11 has shifted the inquiry to whether a plaintiff is a private individual or a public figure or
12 public official.⁵¹

13 1258. Pennsylvania has adopted a negligence standard for private figure plaintiff
14 lawsuits regarding issues of private concern.⁵²

15 1259. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
16 or obligation recognized by the law, requiring the actor to conform to a certain standard
17 of conduct; (2) a failure to conform to the required standard; (3) a causal connection

⁵⁰42 Pa.C.S. § 8343(a)(1-7).

⁵¹*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the defendant can lead to wider array of potential damages.

⁵²*Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

1 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
2 the interests of another.⁵³

3 **The Context**

4 1260. Defendants St. Luke's Hospital, and OBHG PA, among other parties named and
5 unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
6 Family, including Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

7 1261. Upon information and belief, Ms. Teresa Marlino, MD, supported the hostile
8 atmosphere intentionally created by St. Luke's Hospital and OBHG PA.

9 1262. Defendants St. Luke's Hospital, and OBHG PA coordinated their employees,
10 agents, or assigns, including Ms. Teresa Marlino, MD, towards a narrative that Mrs.
11 Smith was a methamphetamine addict and that Plaintiff Mrs. Smith gave birth to Plaintiff
12 Newborn baby J.A.S. who was also a methamphetamine addict.

13 1263. The umbilical cord that connected Plaintiffs Newborn baby J.A.S. and Mrs. Smith
14 was tested on April 9th, 2021, and was negative for amphetamines and
15 methamphetamines.

16 1264. Despite the umbilical cord that connected Plaintiffs Newborn baby J.A.S. and
17 Mrs. Smith testing negative for illegal drugs, Defendants St. Luke's Hospital and OBHG
18 PA, acting through agent, employee, or assign Ms. Teresa Marlino, MD, continued the
19 narrative that Plaintiff Mrs. Smith was a methamphetamine addict and that Plaintiff Mrs.

⁵³See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 Smith gave birth to Plaintiff Newborn baby J.A.S. who was also a methamphetamine
2 addict.

3 1265. Medical records on April 9th, 2021, reflect the statement, “[F]amily was requesting
4 discharge at 12 hours of life.”

5 1266. At approximately 12-hours of Plaintiff Newborn baby J.A.S.’s life, Mr. and Mrs.
6 Smith requested to be discharged from Defendant St. Luke’s Hospital when practicable,
7 not immediately at 12 hours from birth, as is suggested in the medical records entered
8 by St. Luke’s Hospital agents, employees, and/or assigns.

9 1267. Upon information and belief, Defendant St. Luke’s Hospital, and, OBHG PA,
10 through their agents, employees, or assigns, was further attempting to imply that
11 Plaintiff Mrs. Smith was urgently seeking to go home so that she could consume
12 methamphetamine by making the medical records appear that Plaintiff Mrs. Smith
13 quickly sought to reingest methamphetamine by going home as soon as possible after
14 her newborn baby’s birth.

15 1268. Beginning on April 10th, 2021 the statement, “High probability of life[-]threatening
16 clinical deterioration in infant’s condition without treatment,” began regularly appearing
17 in Plaintiff Newborn baby J.A.S.’s medical records.

18 1269. Mr. and Mrs. Smith were not ever told by any agent, employee, or assign of
19 Defendants St. Luke’s Hospital, nor OBHG PA that Newborn baby J.A.S. had a, “High
20 probability of life[-]threatening clinical deterioration...without treatment.”

21 1270. Despite the accusation of methamphetamine use by Defendants St. Luke’s
22 Hospital, and OBHG PA, and their agents, assigns, or employees, Plaintiff Mrs. Smith
23 was allowed to breastfeed Plaintiff Newborn baby J.A.S.

1 1271. Despite Plaintiffs Mrs. Smith and Newborn baby J.A.S. being suspected of
2 methamphetamine addiction, state-mandated policies and procedures for
3 methamphetamine withdrawal were not implemented for Plaintiff Newborn baby J.A.S.
4 by Defendants St. Luke's Hospital, OBHG PA, nor any other health provider.

5 1272. Notes on medical records by non-radiology experts from April 11th, 2021, stated
6 that, "...upon admission to the NICU [newborn baby J.A.S.] showed hazy lung fields
7 with expansion to 5-9 ribs."

8 1273. Radiology indicates in the medical record no "hazy lung fields" or "expansion"
9 into Plaintiff Newborn baby J.A.S.'s lungs.

10 1274. Radiology, instead indicates in the medical record, "Perhaps minimal asymmetric
11 granular opacity on the right. No consolidation. No discernable pneumothorax or
12 layering pleural effusion on limited supine imaging. Osseous structures appear within
13 normal limits for patient age."

14 1275. Upon information and belief, Defendants St. Luke's Hospital, and OBHG PA, and
15 other parties named and unnamed in this lawsuit, manipulated the medical records in
16 their own interpretations of the radiologist's report to paint Plaintiffs Newborn baby
17 J.A.S. and Mrs. Smith as methamphetamine addicts by constructing a reason to keep
18 Plaintiff Newborn baby J.A.S. in the hospital against the will and consent of his parents.

19 1276. As represented in the medical documentation, beginning on April 10th, 2021,
20 Plaintiff Mrs. Smith was under constant monitoring by Defendant St. Luke's Hospital and
21 OBHG PA for "inappropriate behavior" via their agents, employees, and/or assigns.

22 1277. As of April 9th, 2021, Mr. Smith was not allowed to ever be on Defendant St.
23 Luke's Hospital Property without the risk of being arrested.

1 1278. As of April 10th, 2021, Plaintiff Mrs. Smith was supervised around the clock by
2 male security guards, even while breastfeeding, and walking to the restroom.

3 **Additional Context & The Libelous Statement**

4 1279. Upon information and belief, Defendant Ms. Teresa Marlino, MD supported the
5 hostile atmosphere intentionally created by St. Luke's Hospital, and/or OBHG PA
6 against the Plaintiff Smith Family.

7 1280. On April 9th, 2021, Defendant Ms. Teresa Marlino, MD, in Plaintiff Mrs. Smith's
8 medical records, in the "Progress Notes" by Denese Brown, MD, attested to the
9 following, "I [Ms. Marlino, MD] told them [Mr. & Mrs. Smith] that because her [Mrs.
10 Smith's] urine drug screen, as well as the baby's urine drug screen, were positive for
11 THC and methamphetamine, the hospital social worker has contacted the Monroe
12 County Children and Youth Services".

13 1281. Defendant Ms. Teresa Marlino, MD, on April 9th, 2021, electronically signed the
14 aforementioned representation in the medical records that Plaintiff Mrs. Smith tested
15 positive for methamphetamine thereby adding the weight of her position to the false
16 narrative that Plaintiff Mrs. Smith ingested methamphetamine and that she passed the
17 harmful and deleterious effects of methamphetamine onto Plaintiff Newborn baby J.A.S.

18 1282. Plaintiff Mrs. Smith did not ever test positive for methamphetamine.

19 1283. Plaintiff Newborn baby J.A.S. did not ever test positive for methamphetamine.

20 1284. There is not any valid reason to place a child's medical information in his
21 mother's medical records, as that is a violation of the child's right to medical privacy;
22 each individual's medical records should only represent themselves.

1 1285. There is not any valid reason to place false medical information about a newborn
2 child in his mother's medical records.

3 1286. A likely reason to place false medical information about a newborn child in his
4 mother's medical records is to attempt to color Plaintiff Mrs. Smith as an illegal
5 methamphetamine user and that by extension her newborn baby as a
6 methamphetamine addict.

7 *Libel Per Se I(a)*

8 1287. The statement in Plaintiff Newborn baby J.A.S.'s medical records as represented
9 by Defendant Ms. Teresa Marlino, MD, and ratified with the weight of her position that, "I
10 [Ms. Marlino, MD] told them [Mr. & Mrs. Smith] that because her [Mrs. Smith's] urine
11 drug screen, as well as the baby's urine drug screen, were positive for THC and
12 methamphetamine, the hospital social worker has contacted the Monroe County
13 Children and Youth Services," harmed the reputation of Plaintiffs Mrs. Smith and
14 n]Newborn baby J.A.S. in the estimation of the community by stating that Plaintiff Mrs.
15 Smith is a user of illegal of methamphetamines and that she and her newborn child
16 J.A.S. were addicted to illegal and harmful substances.

17 1288. The defamatory statement is harmful in character because it states that
18 Defendant Mrs. Smith has ingested the illegal and harmful substance of
19 methamphetamine and that she passed deleterious harm onto her child Plaintiff
20 Newborn baby J.A.S.

21 1289. Defendant Ms. Teresa Marlino, MD, published the defamatory statement in
22 Plaintiff Mrs. Smith's medical records where the statements were read by every medical

1 provider who thereafter consulted Plaintiff Mrs. Smith's medical records for an update or
2 history on her status, as well as, other state parties when they became involved in
3 investigating the Smith Family.

4 1290. Upon information and belief, it can be demonstrated through Defendant
5 testimonies, examinations of medical records, and hospital policies, such as, in-person,
6 around the clock surveillance of a breastfeeding mother by male hospital security
7 officers, that recipients of the publication understood that the meaning of the publication
8 was that Plaintiff Mrs. Smith had ingested illegal methamphetamine and passed that
9 harm onto Plaintiff Newborn baby J.A.S.

10 1291. Since the defamatory statement is contained within Plaintiff Mrs. Smith's medical
11 records, and because Plaintiff Newborn baby J.A.S. is her baby, it was clear that the
12 defamatory statement was to be applied to both Plaintiffs Newborn baby J.A.S. and Mrs.
13 Smith.

14 1292. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
15 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
16 Luke's Hospital, and OBHG PA were aware of, causing a postpartum mother to
17 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
18 each other's invalid moral positions leading other staff to regard their inappropriate
19 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
20 considered abused by his mother through her use of illegal drugs, by Defendants St.
21 Luke's Hospital, and OBHG PA, through their agent, employee, or assign, Ms. Teresa
22 Marlino, MD.

1 1293. Upon information and belief, Defendants St. Luke's Hospital, and/or OBHG PA,
2 through their agent, employees, or assign, Ms. Teresa Marlino, MD, abused her
3 conditionally privileged occasion when as a medical provider with the ability to alter and
4 manipulate medical records, did falsify those records through the published defamatory
5 statement.

6 1294. Plaintiffs' Newborn baby J.A.S. and Mrs. Smith are private individuals and not
7 public figures.

8 1295. Since this is a case of a private figure plaintiff redressing issues of private
9 concern, the appropriate standard for this libel claim is one of negligence.

10 1296. Negligence: (1) Medical providers with the ability to alter medical records are
11 required to maintain true and accurate records.

12 1297. Negligence: (2) Medical provider Ms. Teresa Marlino, MD did not maintain true
13 and accurate medical records when Defendant Ms. Teresa Marlino, MD represented in
14 Plaintiff Mrs. Smith's medical records that, "I [Ms. Marlino, MD] told them [Mr. & Mrs.
15 Smith] that because her [Mrs. Smith's] urine drug screen, as well as the baby's urine
16 drug screen, were positive for THC and methamphetamine, the hospital social worker
17 has contacted the Monroe County Children and Youth Services," and then Defendant
18 Ms. Teresa Marlino, MD certified the representation in Plaintiff Mrs. Smith's medical
19 records.

20 1298. Negligence: (3) Upon information and belief, but for the actions of the Defendant
21 attesting to Plaintiff Mrs. Smith as a methamphetamine user, Plaintiff Mrs. Smith would
22 not have suffered the aforementioned harms and indignities mentioned earlier in this

1 allegation of libelous defamation, as well, it is likely that Plaintiff Mrs. Smith would not
2 have had pervasive and injurious inquiries about private family matters by state officials.

3 1299. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
4 Defendants' conduct, including but not limited to, emotional and psychological distress,
5 pain and suffering, and injury to their reputations.

6 1300. In *libel per se* cases Pennsylvania defamation law considers "Words that on their
7 face and without the aid of extrinsic evidence are recognized as injurious are actionable
8 per se...."⁵⁴

9 1301. Upon information and belief, the Defendant Ms. Teresa Marlino, MD, directly and
10 unequivocally accused Plaintiff Mrs. Smith of being a methamphetamine user in her
11 newborn child's medical records which are on their face and without the aid of extrinsic
12 evidence injurious, and actionable for a *libel per se* claim.

13 1302. In *libel pe se* cases, Pennsylvania law observes that, "words imputing a criminal
14 offense, loathsome disease, business misconduct or serious sexual misconduct" will be
15 considered defamatory per se.⁵⁵

16 1303. Since Defendant Ms. Teresa Marlino, MD, directly and unequivocally accused
17 Plaintiff Mrs. Smith of being a methamphetamine user in her newborn child's medical
18 records, and since methamphetamine is an illegal controlled substance, the Defendant
19 imputed a criminal offense, thereby making this an actionable *libel per se* claim.

⁵⁴*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

⁵⁵*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 1304. Upon information and belief, Plaintiff can demonstrate by a preponderance of
2 evidence that the Defendants Private Entities St. Luke's Hospital, and/or OBHG PA
3 supervised Defendant Ms. Teresa Marlino, MD in connection with this allegation and are
4 therefore liable under a legal theory of respondeat superior.

5 1305. Upon information and belief, Defendants St. Luke's Hospital, OBHG PA, and Ms.
6 Teresa Marlino, MD's conduct violated Plaintiffs' rights under Pennsylvania Statute 42
7 Pa. C.S. § 8343 for defamation.

8 *Or, In the Alternative,*

9 *Libel Per Quod I(b)*

10 1306. The statement in Plaintiff Mrs. Smith's medical records as represented by
11 Defendant Ms. Teresa Marlino, MD, and ratified with the weight of her authority that "I
12 [Ms. Marlino, MD] told them [Mr. & Mrs. Smith] that because her [Mrs. Smith's] urine
13 drug screen, as well as the baby's urine drug screen, were positive for THC and
14 methamphetamine, the hospital social worker has contacted the Monroe County
15 Children and Youth Services," harmed the reputation of Plaintiffs Mrs. Smith and
16 Newborn baby J.A.S. in the estimation of the community by stating that Plaintiff Mrs.
17 Smith is a user of illegal of methamphetamines and that she and her newborn child
18 J.A.S. were addicted to illegal and harmful substances.

19 1307. The defamatory statement is harmful in character because it states that Plaintiff
20 Mrs. Smith has abused the illegal and harmful substance of methamphetamine and that
21 she passed that harm onto her child Plaintiff Newborn baby J.A.S.

1 1308. Defendant Ms. Teresa Marlino, MD, published the defamatory statement in
2 Plaintiff Mrs. Smith's medical records where the statements were read by every medical
3 provider who thereafter consulted Plaintiff Mrs. Smith's medical records for an update or
4 history on her status, as well as, other state parties when they became involved in
5 investigating the Smith Family.

6 1309. Upon information and belief, it can be demonstrated through Defendant
7 testimonies, examinations of medical records, and hospital policies, such as, in-person,
8 around the clock surveillance of a breastfeeding mother by male hospital security
9 officers, that recipients of the publication understood that the meaning of the publication
10 was that Plaintiff Mrs. Smith had ingested illegal methamphetamine.

11 1310. Since the defamatory statement is contained within Plaintiff Mrs. Smith's medical
12 records, and because Plaintiff Mrs. Smith is the mother of Plaintiff Newborn baby J.A.S.
13 it was clear that the defamatory statements were to be applied to both Plaintiffs
14 Newborn baby J.A.S. and Mrs. Smith.

15 1311. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
16 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
17 Luke's Hospital and OBHG PA were aware of, causing a postpartum mother to
18 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
19 each other's invalid moral positions leading other staff to regard their inappropriate
20 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
21 considered abused by his mother through her use of illegal drugs, by Defendants St.
22 Luke's Hospital, and OBHG PA through their agent, employee, or assign, Ms. Teresa
23 Marlino, MD.

1 1312. Upon information and belief, St. Luke's Hospital, and OBHG PA, through their
2 agent, employee, or assign, Ms. Teresa Marlino, MD, abused her conditionally
3 privileged occasion when as a medical provider with the ability to alter and manipulate
4 medical records, did falsify those records through the published defamatory statement.

5 1313. Plaintiffs' Newborn baby J.A.S. and Mrs. Smith are private individuals and not
6 public figures.

7 1314. Since this is a case of a private figure plaintiff redressing issues of private
8 concern, the appropriate standard for this libel claim is one of negligence.

9 1315. Negligence: (1) Medical providers with the ability to alter medical records are
10 required to maintain true and accurate records.

11 1316. Negligence: (2) Medical provider Defendant Ms. Teresa Marlino, MD, did not
12 maintain true and accurate medical records when Defendant Ms. Teresa Marlino, MD,
13 represented in Plaintiff Mrs. Smith's medical records that both Plaintiffs Newborn baby
14 J.A.S. and Mrs. Smith "tested positive for methamphetamines," and then certified the
15 representation in Plaintiff Mrs. Smith's medical records.

16 1317. Negligence: (3) Upon information and belief, but for the actions of the Defendant
17 attesting to Plaintiff Mrs. Smith as a methamphetamine user, Mrs. Smith would not have
18 suffered the aforementioned harms and indignities mentioned earlier in this allegation of
19 libelous defamation, as well, it is likely that Mrs. Smith would not have had pervasive
20 and injurious inquiries about private family matters by state officials.

21 1318. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
22 Defendants' conduct, including but not limited to, emotional and psychological distress,
23 pain and suffering, and injury to their reputations.

1 1319. In *libel per quod* cases Pennsylvania defamation law considers extrinsic
2 supporting evidence of libelous behavior if the injurious nature of the words is not
3 apparent.⁵⁶

4 1320. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
5 evidence that through the presentation of medical records, police reports, and other
6 administrative documentation that the libelous statement was not a mere description of
7 the baby or his mother for the medical edification of potential diagnosis concerning
8 Plaintiffs Newborn baby J.A.S. or Mrs. Smith, but was instead a statement intended to
9 cast unfounded and harmful aspersions on both Plaintiffs Newborn baby J.A.S. and
10 Mrs. Smith.

11 1321. Plaintiffs will need to demonstrate necessary innuendo by Defendant Parties.

12 1322. “Innuendo”, “define[s] the defamatory meaning which the plaintiff attaches to the
13 words” and “show[s] how they come to have that meaning and how they relate to the
14 plaintiff.”⁵⁷

15 1323. Methamphetamine is an illegal controlled substance, which has deleterious
16 effects on those that consume it.

17 1324. Deleterious effects caused by methamphetamine when consumed by a pregnant
18 mother will likely be passed on to her child in utero via the umbilical cord.

⁵⁶*Joseph*, 959 A.2d at n.23.

⁵⁷*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962) (citations omitted).

1 1325. When Defendant Ms. Teresa Marlino, MD, represented and certified the libelous
2 statement, adding the weight of the authority of her position to the narrative that Plaintiff
3 Mrs. Smith ingested methamphetamine and passed it along to her newborn baby, it was
4 to make clear to other medical professionals, administrators, and/or state personnel that
5 Plaintiff Mrs. Smith consumed methamphetamine and that she likely passed on the
6 deleterious effects of methamphetamine use to her child Plaintiff Newborn baby J.A.S.

7 1326. The libelous statement relates to the Plaintiffs Newborn baby J.A.S. and Mrs.
8 Smith because the statement is about Plaintiffs Mrs. Smith and Newborn baby J.A.S.,
9 and it is in Plaintiff Mrs. Smith's medical records.

10 1327. Upon information and belief, Plaintiff can demonstrate by a preponderance of
11 evidence that the Defendants Private Entities St. Luke's Hospital, and OBHG PA,
12 supervised Ms. Teresa Marlino, MD in connection with this allegation and are therefore
13 liable under a legal theory of respondeat superior.

14 1328. Upon information and belief, Defendants St. Luke's Hospital, OBHG PA, and Ms.
15 Teresa Marlino, MD's conduct violated Plaintiffs' rights under Pennsylvania Statute 42
16 Pa.C.S. § 8343 for defamation.

17 *Or, In the Alternative*

18 *Libel by Implication I(c)*

19 **The Libelous Statement & Implication**

1 1329. Upon information and belief, Defendant Ms. Teresa Marlino, MD, supported the
2 hostile atmosphere intentionally created by Defendants St. Luke's Hospital, and OBHG
3 PA, against the Plaintiff Smith Family.

4 1330. Defendant Ms. Teresa Marlino, MD stated on April 9th, 2021 in Plaintiff Mrs.
5 Smith's medical records that, "I [Ms. Marlino, MD] told them [Mr. & Mrs. Smith] that
6 because her [Mrs. Smith's] urine drug screen, as well as the baby's urine drug screen,
7 were positive for THC and methamphetamine, the hospital social worker has contacted
8 the Monroe County Children and Youth Services".

9 1331. Defendant Ms. Teresa Marlino, MD did verbalize to Mr. and Mrs. Smith the
10 aforementioned statement as a matter of facts.

11 1332. There is not a valid reason to place a newborn baby's medical status in the
12 mother's personal medical records.

13 1333. A likely reason to place medical information about a newborn child in that child's
14 mother's medical records is to attempt to color Plaintiff Mrs. Smith as a potentially illegal
15 methamphetamine user and that by extension her newborn baby suffers from the
16 deleterious effects of methamphetamine.

17 1334. The statement in Plaintiff Mrs. Smith's medical records as represented by
18 Defendant Ms. Teresa Marlino, MD, that "I [Ms. Marlino, MD] told them [Mr. & Mrs.
19 Smith] that because her [Mrs. Smith's] urine drug screen, as well as the baby's urine
20 drug screen, were positive for THC and methamphetamine, the hospital social worker
21 has contacted the Monroe County Children and Youth Services," harmed the reputation
22 of Plaintiffs Mrs. Smith and Newborn baby J.A.S. in the estimation of the community by

1 implying that Plaintiff Mrs. Smith is a user of illegal of methamphetamines and that she
2 and her newborn child J.A.S. were addicted to illegal and harmful substances.

3 1335. The defamatory statement is harmful in character because it implies that
4 Defendant Mrs. Smith has abused the illegal and harmful substance of
5 methamphetamine and that she passed that harm onto her child Plaintiff Newborn baby
6 J.A.S.

7 1336. Defendant Ms. Teresa Marlino, MD, published the defamatory statement in
8 Plaintiff Mrs. Smith's medical records as an addendum where the statements were likely
9 read by every medical provider who thereafter consulted Plaintiff Mrs. Smith's medical
10 records for an update on her status, as well as, other state parties when they became
11 involved in investigating the Smith Family.

12 1337. Upon information and belief, it can be demonstrated through Defendant
13 testimonies, examinations of medical records, and hospital policies, such as, in-person,
14 around the clock surveillance of a breastfeeding mother by male hospital security
15 officers, that recipients of the publication understood that the meaning of the publication
16 was that Plaintiff Mrs. Smith had ingested illegal methamphetamine.

17 1338. Since the defamatory statement is contained within Plaintiff Newborn baby
18 J.A.S.'s medical records, and because Plaintiff Mrs. Smith is the mother of Plaintiff
19 Newborn baby J.A.S. it was clear that the defamatory statement was to be applied to
20 both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

21 1339. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
22 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
23 Luke's Hospital, and/or OBHG, were aware of, causing a postpartum mother to

1 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
2 each other's invalid moral positions leading other staff to regard their inappropriate
3 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
4 considered abused by his mother through her use of illegal drugs, by Defendants St.
5 Luke's Hospital and OBHG PA through their agent, employee, or assign, Ms. Teresa
6 Marlino, MD.

7 1340. Upon information and belief, St. Luke's Hospital, and OBHG PA, through their
8 agent, employee, or assign, Defendant Ms. Teresa Marlino, MD, abused her
9 conditionally privileged occasion when as a medical provider with the ability to alter and
10 manipulate medical records, did write true statements in those records, including the
11 published defamatory statement that in their culmination lead to false assertions about
12 the Plaintiffs.

13 1341. Plaintiffs' Newborn baby J.A.S. and Mrs. Smith are private individuals and not
14 public figures.

15 1342. Since this is a case of a private figure plaintiff redressing issues of private
16 concern, the appropriate standard for this libel claim is one of negligence.

17 1343. Negligence: (1) Medical providers with the ability to alter medical records are
18 required to maintain medical records that reflect the truth of a matter in both itemized
19 mentions of fact and the totality of what those facts are to represent.

20 1344. Negligence: (2) Medical provider Defendant Ms. Teresa Marlino, MD, did
21 maintain true and accurate medical records when itemized mentions of fact were read in
22 isolation from one another; however, when taken as a totality the facts present the
23 Plaintiffs in a harmful and dishonest light, culminating with when Defendant Ms. Teresa

1 Marlino, MD, represented in Plaintiff Mrs. Smith's medical records that Defendant Ms.
2 Marlino, MD, did actually and truthfully make the defamatory statement to Mr. and Mrs.
3 Smith.

4 1345. Negligence: (3) Upon information and belief, but for the actions of the Defendant
5 implying that Plaintiff Mrs. Smith was a methamphetamine user, Plaintiff Mrs. Smith
6 would not have suffered the aforementioned harms and indignities mentioned earlier in
7 this allegation of libelous defamation, as well, it is likely that Plaintiff Mrs. Smith would
8 not have had pervasive and injurious inquiries about private family matters by state
9 officials.

10 1346. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
11 Defendant's conduct, including but not limited to, emotional and psychological distress,
12 pain and suffering, and injury to their reputations.

13 1347. Libel by Implication occurs when "true facts that in context imply a falsehood."⁵⁸

14 1348. In addition, "the literal accuracy of separate statements will not render a
15 communication 'true' where, as here, the implication of the communication as a whole
16 was false."⁵⁹

17 1349. Upon information and belief, Plaintiffs' Newborn baby J.A.S. and Mrs. Smith can
18 demonstrate by a preponderance of the evidence that any one statement in Plaintiff

⁵⁸*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

⁵⁹*Id.* at 493.

1 Mrs. Smith's medical records may be true, but the implication of the communications as
2 a whole in Plaintiff Mrs. Smith's medical records is false.

3 1350. As well, if "the defendant juxtaposes [a] series of fact so as to imply a defamatory
4 connection between them, or [otherwise] creates a defamatory implication..." then a
5 libelous statement by implication is present.⁶⁰

6 1351. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
7 demonstrate by a preponderance of the evidence that many facts contained within Mrs.
8 Smith's medical records juxtaposes a series of facts so as to imply a defamatory
9 connection of methamphetamine ingestion by Plaintiff Mrs. Smith, the deleterious
10 effects of which were passed on to Plaintiff Newborn baby J.A.S., such as how lab
11 records indicate that Defendant Mrs. Smith's urinary drug screen did test positive for
12 stimulants, but that the Defendants then took that undifferentiated information and
13 constructed a narrative that Mrs. Smith ingested methamphetamine.

14 1352. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
15 evidence that the Defendants Private Entities St. Luke's Hospital, and OBHG PA,
16 supervised Defendant Ms. Teresa Marlino, MD, in connection with this allegation and
17 are therefore liable under a legal theory of respondeat superior.

18 1353. Upon information and belief, Defendants St. Luke's Hospital, OBHG PA, and Ms.
19 Teresa Marlino, MD's conduct violated Plaintiffs' rights under Pennsylvania Statute 42
20 Pa. C.S. § 8343 for defamation.

21 **Damages for Libel I(a-c)**

⁶⁰*Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 1354. Plaintiff Mrs. Smith suffered substantial harm as a result of Defendants' conduct,
2 including but not limited to, emotional and psychological distress, pain and suffering,
3 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
4 compensatory damages to account for PTSD therapies and other related treatments as
5 they have been and will continue to be necessary; Plaintiffs respectfully request an
6 amount of \$595,000 in compensatory damages per Defendant.

7 1355. Given the substantial wealth of the Defendants St. Luke's Hospital, OBHG PA,
8 and Ms. Teresa Marlino, MD, and therefore, its ability to afford the appropriate training
9 to avoid this egregious violation of the Pennsylvania Statutory Law, and, since harm
10 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
11 continue to harm future postpartum families, and because the acts of the Defendants
12 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
13 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
14 punitive damages on Defendants St. Luke's Hospital, OBHG PA, and Ms. Teresa
15 Marlino, MD to deter such Defendants from committing to such conduct in the future
16 which violates Commonwealth of Pennsylvania Statutory Law Plaintiffs respectfully
17 request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's
18 Hospital, OBHG PA, and Ms. Teresa Marlino, MD.

19 1356. In the unlikely event that the jury does not find that Plaintiffs Mrs. Smith and
20 Newborn baby J.A.S. suffered any actual injury despite the deprivation of their statutory
21 law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

22 **XXIII. § 42 Pa. C. S. § 8343, Defamation - Libel II**

1 Newborn baby J.A.S. and Mrs. Grace Smith v. St. Luke's Hospital, Onsite Neonatal,
2 & Ms. Cynthia Shultz, MD

3 1357. Under Pennsylvania defamation law, a communication will be considered
4 defamatory if it "tends so to harm the reputation of [the complaining party] as to lower
5 him in the estimation of the community or to deter third persons from associating or
6 dealing with him."⁶¹

7 1358. In order for Plaintiffs to succeed in their claim, they must prove the following
8 elements⁶².

- 9 (1) The defamatory character of the communication;
10 (2) Its publication by the defendant;
11 (3) Its application to the plaintiff;
12 (4) The understanding by the recipient of its defamatory meaning;
13 (5) The understanding by the recipient of it as intended to be applied to the plaintiff;
14 (6) Special harm resulting to the plaintiff from its publication; and
15 (7) Abuse of a conditionally privileged occasion.

⁶¹*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

⁶²42 Pa.C.S. § 8343(a)(1-7).

1 1359. The Pennsylvania Supreme Court has abolished an “actual malice” standard and
2 has shifted the inquiry to whether a plaintiff is a private individual or a public figure or
3 public official.⁶³

4 1360. Pennsylvania has adopted a negligence standard for private figure plaintiff
5 lawsuits regarding issues of private concern.⁶⁴

6 1361. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
7 or obligation recognized by the law, requiring the actor to conform to a certain standard
8 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
9 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
10 the interests of another.⁶⁵

11 **The Context**

12 1362. Defendants St. Luke’s Hospital and Onsite Neonatal, among other parties named
13 and unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
14 Family, including Plaintiffs’ Newborn baby J.A.S. and Mrs. Smith.

⁶³*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the defendant can lead to wider array of potential damages.

⁶⁴*Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

⁶⁵*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 1363. Upon information and belief, Defendant Ms. Cynthia Shultz, MD, supported the
2 hostile atmosphere intentionally created by Defendants St. Luke's Hospital and Onsite
3 Neonatal.

4 1364. Defendants St. Luke's Hospital, and Onsite Neonatal coordinated their employee,
5 agent, or assign, Defendant Ms. Cynthia Shultz, MD, towards a narrative that Plaintiff
6 Mrs. Smith was a methamphetamine addict and that Plaintiff Mrs. Smith gave birth to
7 Plaintiff Newborn baby J.A.S. who was also a methamphetamine addict.

8 1365. The umbilical cord that connected Plaintiffs' Newborn baby J.A.S. and Mrs. Smith
9 was tested on April 9th, 2021, and was negative for amphetamines and
10 methamphetamines.

11 1366. Despite the umbilical cord that connected Plaintiffs' Newborn baby J.A.S. and
12 Mrs. Smith testing negative for illegal drugs, Defendants St. Luke's Hospital and Onsite
13 Neonatal, acting through agent, employee, or assign Defendant Ms. Cynthia Shultz,
14 MD, continued the narrative that Plaintiff Mrs. Smith was a methamphetamine addict
15 and that Plaintiff Mrs. Smith gave birth to Plaintiff Newborn baby J.A.S. who was also a
16 methamphetamine addict.

17 1367. Medical records on April 9th, 2021, reflect the statement, "[F]amily was requesting
18 discharge at 12 hours of life."

19 1368. Mr. and Mrs. Smith requested at approximately 12-hours of Plaintiff Newborn
20 baby J.A.S.'s life that the Smith Family be discharged from Defendant St. Luke's
21 Hospital when practicable, not immediately at 12 hours from birth, as is suggested in the
22 medical records entered by Defendant St. Luke's Hospital agents, employees, and/or
23 assigns.

1 1369. Defendants St. Luke's Hospital and Onsite Neonatal through their agents,
2 employees, or assigns, was further attempting to imply that Plaintiff Mrs. Smith was
3 urgently seeking to go home so that she could consume methamphetamine by making
4 the medical records appear that Plaintiff Mrs. Smith quickly sought to reingest
5 methamphetamine by going home as soon as possible after her newborn baby's birth.

6 1370. Beginning on April 10th, 2021 the statement, "High probability of life[-]threatening
7 clinical deterioration in infant's condition without treatment," began regularly appearing
8 in medical records.

9 1371. Mr. and Mrs. Smith were not ever told by any agent, employee, or assign of
10 Defendants St. Luke's Hospital nor Onsite Neonatal that Plaintiff Newborn baby J.A.S.
11 had a, "High probability of life[-]threatening clinical deterioration...without treatment."

12 1372. Despite the accusation of methamphetamine use by Defendants St. Luke's
13 Hospital and Onsite Neonatal and their agents, assigns, or employees, Plaintiff Mrs.
14 Smith was allowed to breastfeed Plaintiff Newborn baby J.A.S.

15 1373. Despite Plaintiffs Mrs. Smith and Newborn baby J.A.S. being suspected of
16 methamphetamine addiction, state mandated policies and procedures for
17 methamphetamine withdrawal were not implemented for Plaintiff Newborn baby J.A.S.
18 by Defendants St. Luke's Hospital, Onsite Neonatal, nor any other health provider.

19 1374. Notes on medical records by non-radiology experts from April 11th, 2021, stated
20 that, "...upon admission to the NICU [newborn baby J.A.S.] showed hazy lung fields
21 with expansion to 5-9 ribs."

22 1375. Radiology indicates in the medical record no "hazy lung fields" or "expansion"
23 into Plaintiff Newborn baby J.A.S.'s lungs.

1 1376. Radiology instead indicates in the medical record, "Perhaps minimal asymmetric
2 granular opacity on the right. No consolidation. No discernable pneumothorax or
3 layering pleural effusion on limited supine imaging. Osseous structures appear within
4 normal limits for patient age."

5 1377. Upon information and belief, Defendants St. Luke's Hospital and Onsite
6 Neonatal, and other parties named and unnamed in this lawsuit, manipulated the
7 medical records in their own interpretations of the radiologist's report to paint Plaintiff's
8 Newborn baby J.A.S. and Mrs. Smith as methamphetamine addicts by constructing a
9 reason to keep Plaintiff Newborn baby J.A.S. in the hospital against the will and consent
10 of his parents.

11 1378. As represented in the medical documentation, beginning on April 10th, 2021,
12 Plaintiff Mrs. Smith was under constant monitoring by Defendants St. Luke's Hospital
13 and Onsite Neonatal for "inappropriate behavior" via their agents, employees, and/or
14 assigns.

15 1379. As of April 9th, 2021, Mr. Smith was not allowed to ever be on Defendant St.
16 Luke's Hospital's property at the risk of being arrested.

17 1380. As of April 10th, 2021, Plaintiff Mrs. Smith was supervised around the clock by
18 male security guards, even while breastfeeding, and walking to the restroom.

19 **Additional Context & The Libelous Statement**

20 1381. Upon information and belief, Defendant Ms. Cynthia Shultz, MD supported the
21 hostile atmosphere intentionally created by Defendants St. Luke's Hospital and Onsite
22 Neonatal, against the Plaintiff Smith Family.

1 1382. Defendant Ms. Cynthia Shultz, MD, on April 9th, 2021 in Plaintiff Newborn baby
2 J.A.S.'s medical records, under the heading "Quick Note" by Ms. Cynthia Shultz, MD,
3 represented the following, "Dr. Marlino reported that father became agitated and
4 confrontational after learning of the routine report to C&Y for maternal and baby positive
5 UDS screen".

6 1383. Ms. Teresa Marlino, MD, on April 9th, 2021, communicated that the "UDS" or
7 "urinary drug screening" that Plaintiffs Mrs. Smith and Newborn baby J.A.S. tested
8 positive for was the illegal and harmful controlled substance methamphetamine.

9 1384. Plaintiff Mrs. Smith did not ever test positive for methamphetamine.

10 1385. Plaintiff Newborn baby J.A.S. did not ever test positive for methamphetamine.

11 1386. There is not any valid reason to place a mother's medical information in her
12 newborn baby's medical records, as that is a violation of the mother's right to medical
13 privacy; each individuals medical records should only represent themselves.

14 1387. There is not any valid reason to place false medical information about a
15 postpartum mother in her newborn baby's medical records.

16 1388. A likely reason to place false medical information about a mother in her newborn
17 baby's medical records is to attempt to color Plaintiff Mrs. Smith as an illegal
18 methamphetamine user and that by extension her newborn baby as a
19 methamphetamine addict.

20 *Libel Per Se II(a)*

21 1389. The statement in Plaintiff Newborn baby J.A.S.'s medical records as represented
22 by Defendant Ms. Cynthia Shultz, MD, and ratified with the weight of her position that,

1 “Dr. Marlino reported that father became agitated and confrontational after learning of
2 the routine report to C&Y for maternal and baby positive UDS screen,” harmed the
3 reputation of Plaintiffs Mrs. Smith and Newborn baby J.A.S. in the estimation of the
4 community by stating that Plaintiff Mrs. Smith is a user of illegal of methamphetamines
5 and that she and her Plaintiff Newborn baby J.A.S. were addicted to illegal and harmful
6 substances.

7 1390. The defamatory statement is harmful in character because it states that
8 Defendant Mrs. Smith has abused the illegal and harmful substance of
9 methamphetamine and that she passed that harm onto her child Plaintiff Newborn baby
10 J.A.S.

11 1391. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement in
12 Plaintiff Newborn baby J.A.S.’s medical records where the statements were read by
13 every medical provider who thereafter consulted Plaintiff Newborn baby J.A.S.’s medical
14 records for an update or history on his status, as well as, other state parties when they
15 became involved in investigating the Smith Family.

16 1392. Upon information and belief, it can be demonstrated through Defendant
17 testimonies, examinations of medical records, and hospital policies, such as, in-person,
18 around the clock surveillance of a breastfeeding mother by male hospital security
19 officers, that recipients of the publication understood that the meaning of the publication
20 was that Plaintiff Mrs. Smith had ingested illegal methamphetamine and passed that
21 harm onto Plaintiff Newborn baby J.A.S.

22 1393. Since the defamatory statement is contained within Plaintiff Newborn baby
23 J.A.S.’s medical records, and because Plaintiff Newborn baby J.A.S. is Plaintiff Mrs.

1 Smith's baby, it was clear that the defamatory statement was to be applied to both
2 Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

3 1394. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
4 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
5 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to
6 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
7 each other's invalid moral positions leading other staff to regard their inappropriate
8 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
9 considered abused by his mother through her use of illegal drugs, by Defendants St.
10 Luke's Hospital and Onsite Neonatal through their agent, employee, or assign,
11 Defendant Ms. Cynthia Shultz, MD.

12 1395. Upon information and belief, Defendants St. Luke's Hospital and Onsite
13 Neonatal, through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD,
14 abused her conditionally privileged occasion when as a medical provider with the ability
15 to alter and manipulate medical records, did falsify those records through the published
16 defamatory statement.

17 1396. Plaintiffs' Newborn baby J.A.S. and Mrs. Smith are private individuals and not
18 public figures.

19 1397. Since this is a case of a private figure plaintiff redressing issues of private
20 concern, the appropriate standard for this libel claim is one of negligence.

21 1398. Negligence: (1) Medical providers with the ability to alter medical records are
22 required to maintain true and accurate records.

1 1399. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD did not
2 maintain true and accurate medical records when Defendant Ms. Cynthia Shultz, MD
3 represented in Plaintiff Newborn baby J.A.S.'s medical records that, "Dr. Marlino
4 reported that father became agitated and confrontational after learning of the routine
5 report to C&Y for maternal and baby positive UDS screen".

6 1400. Negligence: (3) Upon information and belief, but for the actions of the Defendant
7 attesting to Plaintiff Mrs. Smith as a methamphetamine user, Plaintiff Mrs. Smith would
8 not have suffered the aforementioned harms and indignities mentioned earlier in this
9 allegation of libelous defamation, as well, it is likely that Plaintiff Mrs. Smith would not
10 have had pervasive and injurious inquiries about private family matters by state officials.

11 1401. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
12 Defendants' conduct, including but not limited to, emotional and psychological distress,
13 pain and suffering, and injury to their reputations.

14 1402. In *libel per se* cases Pennsylvania defamation law considers "Words that on their
15 face and without the aid of extrinsic evidence are recognized as injurious are actionable
16 per se...."⁶⁶

17 1403. Upon information and belief, the Defendant Ms. Cynthia Shultz, MD, directly and
18 unequivocally accused Plaintiff Mrs. Smith of being a methamphetamine user in her
19 newborn child's medical records are on their face and without the aid of extrinsic
20 evidence injurious, and actionable for a *libel per se* claim.

⁶⁶*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

1 1404. In *libel pe se* cases, Pennsylvania law observes that, “words imputing a criminal
2 offense, loathsome disease, business misconduct or serious sexual misconduct” will be
3 considered defamatory per se.⁶⁷

4 1405. Since Defendant Ms. Cynthia Shultz, MD, directly and unequivocally accused
5 Plaintiff Mrs. Smith of being a methamphetamine user in her newborn child’s medical
6 records, and since methamphetamine is an illegal controlled substance, the Defendant
7 imputed a criminal offense, thereby making this an actionable *libel per se* claim.

8 1406. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
9 evidence that the Defendants St. Luke’s Hospital, and/or Onsite Neonatal supervised
10 Defendant Ms. Cynthia Shultz, MD in connection with this allegation and are therefore
11 liable under a legal theory of respondeat superior.

12 1407. Upon information and belief, Defendants St. Luke’s Hospital, Onsite Neonatal,
13 and Defendant Ms. Cynthia Shultz, MD’s conduct violated Plaintiffs’ rights under
14 Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

15 *Or, In the Alternative,*

16 *Libel Per Quod II(b)*

17 1408. The statement in Plaintiff Mrs. Smith’s medical records as represented by
18 Defendant Ms. Cynthia Shultz, MD, “Dr. Marlino reported that father became agitated
19 and confrontational after learning of the routine report to C&Y for maternal and baby
20 positive UDS screen,” harmed the reputation of Plaintiffs Mrs. Smith and Newborn baby

⁶⁷*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 J.A.S. in the estimation of the community by representing that Plaintiff Mrs. Smith is a
2 user of illegal of methamphetamines and that she and her Plaintiff son Newborn baby
3 J.A.S. were addicted to illegal and harmful substances.

4 1409. The defamatory statement is harmful in character because it states that Plaintiff
5 Mrs. Smith has abused the illegal and harmful substance of methamphetamine and that
6 she passed that harm onto her child Plaintiff Newborn baby J.A.S.

7 1410. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement in
8 Plaintiff Newborn baby J.A.S.'s medical records where the statements were read by
9 every medical provider who thereafter consulted Plaintiff Mrs. Smith's medical records
10 for an update or history on her status, as well as, other state parties when they became
11 involved in investigating the Smith Family.

12 1411. Upon information and belief, it can be demonstrated through Defendant
13 testimonies, examinations of medical records, and hospital policies, such as, in-person,
14 around the clock surveillance of a breastfeeding mother by hospital security officers,
15 that recipients of the publication understood that the meaning of the publication was that
16 Plaintiff Mrs. Smith had ingested illegal methamphetamine.

17 1412. Since the defamatory statement is contained within Plaintiff Newborn baby
18 J.A.S.'s medical records, and because Plaintiff Mrs. Smith is the mother of Plaintiff
19 Newborn baby J.A.S. it was clear that the defamatory statements were to be applied to
20 both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

21 1413. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
22 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
23 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to

1 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
2 each other's invalid moral positions leading other staff to regard their inappropriate
3 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
4 considered abused by his mother through her use of illegal drugs, by Defendants St.
5 Luke's Hospital and Onsite Neonatal through their agent, employee, or assign,
6 Defendant Ms. Cynthia Shultz, MD.

7 1414. Upon information and belief, Defendants St. Luke's Hospital and Onsite Neonatal
8 through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD, abused
9 her conditionally privileged occasion when as a medical provider with the ability to alter
10 and manipulate medical records, did falsify those records through the published
11 defamatory statement.

12 1415. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
13 public figures.

14 1416. Since this is a case of a private figure plaintiff redressing issues of private
15 concern, the appropriate standard for this libel claim is one of negligence.

16 1417. Negligence: (1) Medical providers with the ability to alter medical records are
17 required to maintain true and accurate records.

18 1418. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD, did not
19 maintain true and accurate medical records when Defendant Ms. Cynthia Shultz, MD,
20 represented in Plaintiff Newborn baby J.A.S.'s medical records that both Plaintiffs
21 Newborn baby J.A.S. and Mrs. Smith tested positive for methamphetamines.

22 1419. Negligence: (3) Upon information and belief, but for the actions of the Defendant
23 attesting to Plaintiff Mrs. Smith as a methamphetamine user, Plaintiff Mrs. Smith would

1 not have suffered the aforementioned harms and indignities mentioned earlier in this
2 allegation of libelous defamation, as well, it is likely that Plaintiff Mrs. Smith would not
3 have had pervasive and injurious inquiries about private family matters by state officials.

4 1420. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
5 Defendants' conduct, including but not limited to, emotional and psychological distress,
6 pain and suffering, and injury to their reputations.

7 1421. In *libel per quod* cases Pennsylvania defamation law considers extrinsic
8 supporting evidence of libelous behavior if the injurious nature of the words is not
9 apparent.⁶⁸

10 1422. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
11 evidence that, through the presentation of medical records, police reports, and other
12 administrative documentation, the libelous statement was not a mere description of the
13 baby or his mother for the medical edification of potential diagnosis concerning Plaintiff
14 Newborn baby J.A.S. or Mrs. Smith, but was instead a statement intended to cast
15 unfounded and harmful aspersions on both Plaintiffs Newborn baby J.A.S. and Mrs.
16 Smith.

17 1423. Plaintiffs will need to demonstrate necessary innuendo by Defendant Parties.

⁶⁸*Joseph*, 959 A.2d at n.23.

1 1424. “Innuendo”, “define[s] the defamatory meaning which the plaintiff attaches to the
2 words” and “show[s] how they come to have that meaning and how they relate to the
3 plaintiff.”⁶⁹

4 1425. Methamphetamine is an illegal controlled substance, which has deleterious
5 effects on those that consume it.

6 1426. Deleterious effects caused by methamphetamine when consumed by a pregnant
7 mother will likely be passed on to her child in utero via the umbilical cord.

8 1427. When Defendant Ms. Cynthia Shultz, MD, represented the libelous statement,
9 adding the weight of the authority of her position to the narrative that Plaintiff Mrs. Smith
10 ingested methamphetamine and passed it along to her Plaintiff son Newborn baby
11 J.A.S., it was to make clear to other medical professionals, administrators, and/or state
12 personnel that Plaintiff Mrs. Smith consumed methamphetamine and that she likely
13 passed on the deleterious effects of methamphetamine use to her child Plaintiff
14 Newborn baby J.A.S.

15 1428. The libelous statement relates to the Plaintiffs Newborn baby J.A.S. and Mrs.
16 Smith because the statement is about Plaintiffs Mrs. Smith and Newborn baby J.A.S.,
17 and it is in Plaintiff Mrs. Smith’s medical records.

18 1429. Upon information and belief, Plaintiff can demonstrate by a preponderance of
19 evidence that the Defendants Private Entities St. Luke’s Hospital and Onsite Neonatal

⁶⁹*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962) (citations omitted).

1 supervised Defendant Ms. Cynthia Shultz, MD in connection with this allegation and are
2 therefore liable under a legal theory of respondeat superior.

3 1430. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
4 and Defendant Ms. Cynthia Shultz, MD's conduct violated Plaintiffs' rights under
5 Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

6 *Or, In the Alternative*

7 *Libel by Implication II(c)*

8 **The Libelous Statement & Implication**

9 1431. Upon information and belief, Defendant Ms. Cynthia Shultz, MD, supported the
10 hostile atmosphere intentionally created by St. Luke's Hospital and Onsite Neonatal
11 against the Plaintiff Smith Family.

12 1432. Defendant Ms. Cynthia Shultz, MD stated on April 9th, 2021 in Plaintiff newborn
13 baby J.A.S.'s medical records that, "Dr. Marlino reported that father became agitated
14 and confrontational after learning of the routine report to C&Y for maternal and baby
15 positive UDS screen".

16 1433. Defendant Ms. Teresa Marlino, MD did verbalize to Ms. Cynthia Shultz, MD the
17 aforementioned statement as a matter of facts.

18 1434. There is not a valid reason to place a mother's medical status in her newborn
19 baby's medical records.

20 1435. A likely reason to place medical information about a mother in her child's medical
21 records is to attempt to color Plaintiff Mrs. Smith as a potentially illegal

1 methamphetamine user and that by extension her newborn baby is a methamphetamine
2 addict.

3 1436. The statement in Plaintiff Newborn baby J.A.S.'s medical records as represented
4 by Defendant Ms. Cynthia Shultz, MD, that "Dr. Marlino reported that father became
5 agitated and confrontational after learning of the routine report to C&Y for maternal and
6 baby positive UDS screen," harmed the reputation of Plaintiffs Mrs. Smith and Newborn
7 baby J.A.S. in the estimation of the community by implying that Plaintiff Mrs. Smith is a
8 user of illegal of methamphetamines and that she and her son Plaintiff Newborn baby
9 J.A.S. were addicted to illegal and harmful substances.

10 1437. The defamatory statement is harmful in character because it implies that Plaintiff
11 Mrs. Smith has abused the illegal and harmful substance of methamphetamine and that
12 she passed that harm onto her child Plaintiff Newborn baby J.A.S.

13 1438. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement in
14 Plaintiff Newborn baby J.A.S.'s medical records as an addendum where the statements
15 were read by every medical provider who thereafter consulted Plaintiff Newborn baby
16 J.A.S.'s medical records for an update on his status, as well as, other state parties when
17 they became involved in investigating the Smith Family.

18 1439. Upon information and belief, it can be demonstrated through Defendant
19 testimonies, examinations of medical records, and hospital policies, such as, in-person,
20 around the clock surveillance of a breastfeeding mother by male hospital security
21 officers, that recipients of the publication understood that the meaning of the publication
22 was that Plaintiff Mrs. Smith had ingested illegal methamphetamine.

1 1440. Since the defamatory statement is contained within Plaintiff Newborn baby
2 J.A.S.'s medical records, and because Plaintiff Mrs. Smith is the mother of Plaintiff
3 Newborn baby J.A.S., it was clear that the defamatory statement was to be applied to
4 both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

5 1441. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
6 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
7 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to
8 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
9 each other's invalid moral positions leading other staff to regard their inappropriate
10 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
11 considered abused by his mother through her use of illegal drugs, by Defendants St.
12 Luke's Hospital and Onsite Neonatal through their agent, employee, or assign,
13 Defendant Ms. Cynthia Shultz, MD.

14 1442. Upon information and belief, Defendants St. Luke's Hospital and Onsite Neonatal
15 through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD, abused
16 her conditionally privileged occasion when, as a medical provider with the ability to alter
17 and manipulate medical records, she did write true statements in those records,
18 including the published defamatory statement that in their culmination lead to false
19 assertions about the Plaintiffs.

20 1443. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
21 public figures.

22 1444. Since this is a case of a private figure plaintiff redressing issues of private
23 concern, the appropriate standard for this libel claim is one of negligence.

1 1445. Negligence: (1) Medical providers with the ability to alter medical records are
2 required to maintain medical records that reflect the truth of a matter in both itemized
3 mentions of fact and the totality of what those facts are to represent.

4 1446. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD, did maintain
5 true and accurate medical records when itemized mentions of fact were read in isolation
6 from one another; however, when taken as a totality the facts present the Plaintiffs in a
7 harmful and dishonest light, culminating with when Defendant Ms. Cynthia Shultz, MD,
8 represented in Plaintiff Newborn baby J.A.S.'s medical records that Ms. Marlino, MD,
9 did actually and truthfully make the defamatory statement to Defendant Ms. Cynthia
10 Shultz, MD.

11 1447. Negligence: (3) Upon information and belief, but for the actions of the Defendant
12 implying that Plaintiff Mrs. Smith was a methamphetamine user, Plaintiff Mrs. Smith
13 would not have suffered the aforementioned harms and indignities mentioned earlier in
14 this allegation of libelous defamation, as well, it is likely that Plaintiff Mrs. Smith would
15 not have had pervasive and injurious inquiries about private family matters by state
16 officials.

17 1448. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
18 Defendant's conduct, including but not limited to, emotional and psychological distress,
19 pain and suffering, and injury to their reputations.

20 1449. Libel by Implication occurs when "true facts that in context imply a falsehood."⁷⁰

⁷⁰*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

1 1450. In addition, “the literal accuracy of separate statements will not render a
2 communication ‘true’ where, as here, the implication of the communication as a whole
3 was false.”⁷¹

4 1451. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
5 demonstrate by a preponderance of the evidence that any one statement in Plaintiff
6 Mrs. Smith’s medical records may be true, but the implication of the communications as
7 a whole in Plaintiff Mrs. Smith’s medical records is false.

8 1452. As well, if “the defendant juxtaposes [a] series of fact so as to imply a defamatory
9 connection between them, or [otherwise] creates a defamatory implication...” then a
10 libelous statement by implication is present.⁷²

11 1453. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
12 demonstrate by a preponderance of the evidence that many facts contained within
13 Plaintiff Newborn baby J.A.S.’s medical records juxtapose a series of facts so as to
14 imply a defamatory connection of methamphetamine ingestion by Plaintiff Mrs. Smith,
15 the deleterious effects of which were passed on to Plaintiff newborn baby J.A.S.

16 1454. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
17 evidence that the Defendants St. Luke’s Hospital and Onsite Neonatal supervised
18 Defendant Ms. Cynthia Shultz, MD, in connection with this allegation, and are therefore
19 liable under a legal theory of respondeat superior.

⁷¹*Id.* at 493.

⁷²*Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 1455. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
2 and Defendant Ms. Cynthia Shultz, MD's conduct violated Plaintiffs' rights under
3 Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

4 **Damages for Libel II(a-c)**

5 1456. Plaintiff Mrs. Smith suffered substantial harm as a result of Defendants' conduct,
6 including but not limited to, emotional and psychological distress, pain and suffering,
7 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
8 compensatory damages to account for PTSD therapies and other related treatments as
9 they have been and will continue to be necessary; Plaintiffs respectfully request an
10 amount of \$595,000 in compensatory damages per Defendant.

11 1457. Given the substantial wealth of the Defendants St. Luke's Hospital, OBHG PA,
12 and Ms. Cynthia Shultz, MD, and therefore, its ability to afford the appropriate training to
13 avoid this egregious violation of the Pennsylvania Statutory Law, and, since harm was
14 actually caused to the current Plaintiff Smith Family, and since harm is likely to continue
15 to harm future postpartum families, and because the acts of the Defendants and their
16 agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless
17 and wanton manner, the Plaintiffs respectfully request the imposition of punitive
18 damages on Defendants St. Luke's Hospital, OBHG PA, and Ms. Cynthia Shultz, MD to
19 deter such Defendants from committing to such conduct in the future which violates
20 Commonwealth of Pennsylvania Statutory Law Plaintiffs respectfully request an amount
21 of \$10,000,000 in punitive damages per Defendants St. Luke's Hospital, Onsite
22 Neonatal, and Ms. Cynthia Shultz, MD.

1 1458. In the unlikely event that the jury does not find that Plaintiffs Mrs. Smith and
2 Newborn baby J.A.S. suffered any actual injury despite the deprivation of their statutory
3 law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.
4

5 **XXIV. § 42 Pa. C. S. § 8343, Defamation - Libel III**

6 Newborn baby J.A.S. and Mrs. Grace Smith v. St. Luke's Hospital, Onsite Neonatal,
7 OBHG PA, Ms. Patricia Bates, CRNP & Mr. Patrick Philpot, DO

8 1459. Under Pennsylvania defamation law, a communication will be considered
9 defamatory if it "tends so to harm the reputation of [the complaining party] as to lower
10 him in the estimation of the community or to deter third persons from associating or
11 dealing with him."⁷³

12 1460. In order for Plaintiffs to succeed in their claim, they must prove the following
13 elements⁷⁴.

- 14 (1) The defamatory character of the communication;
15 (2) Its publication by the defendant;
16 (3) Its application to the plaintiff;
17 (4) The understanding by the recipient of its defamatory meaning;

⁷³*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

⁷⁴42 Pa.C.S. § 8343(a)(1-7).

1 (5) The understanding by the recipient of it as intended to be applied to the plaintiff;

2 (6) Special harm resulting to the plaintiff from its publication; and

3 (7) Abuse of a conditionally privileged occasion.

4 1461. The Pennsylvania Supreme Court has abolished an “actual malice” standard and
5 has shifted the inquiry to whether a plaintiff is a private individual or a public figure or
6 public official.⁷⁵

7 1462. Pennsylvania has adopted a negligence standard for private figure plaintiff
8 lawsuits regarding issues of private concern.⁷⁶

9 1463. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
10 or obligation recognized by the law, requiring the actor to conform to a certain standard
11 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
12 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
13 the interests of another.⁷⁷

14 **The Context**

⁷⁵*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the defendant can lead to wider array of potential damages.

⁷⁶*Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

⁷⁷*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 1464. Defendants St. Luke's Hospital and Onsite Neonatal, among other parties named
2 and unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
3 Family, including Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

4 1465. Defendants Ms. Patricia Bates, CRNP, and Mr. Patrick Philpot, DO supported the
5 hostile atmosphere intentionally created by Defendants St. Luke's Hospital and Onsite
6 Neonatal.

7 1466. Defendants St. Luke's Hospital and Onsite Neonatal coordinated their
8 employees, agents, or assigns, including Defendants Ms. Patricia Bates, CRNP, and
9 Mr. Patrick Philpot, DO, towards a narrative that Plaintiff Mrs. Smith had ingested
10 methamphetamine and that Plaintiff Mrs. Smith gave birth to Plaintiff newborn baby
11 J.A.S. who also suffered the deleterious effects of methamphetamine ingestion by
12 Plaintiff Mrs. Smith.

13 1467. The umbilical cord that connected Plaintiffs Newborn baby J.A.S. and Mrs. Smith
14 was tested on April 9th, 2021, and was negative for amphetamines and
15 methamphetamines.

16 1468. Despite the umbilical cord that connected Plaintiffs Newborn baby J.A.S. and
17 Mrs. Smith testing negative for illegal drugs, Defendants St. Luke's Hospital and Onsite
18 Neonatal, acting through agents, employees, or assigns Defendants Ms. Patricia Bates,
19 CRNP, and Mr. Patrick Philpot, DO, continued the narrative that Plaintiff Mrs. Smith was
20 a methamphetamine user and that Plaintiff Mrs. Smith gave birth to Plaintiff Newborn
21 baby J.A.S. who also suffered the deleterious effects of methamphetamine ingestion by
22 Plaintiff Mrs. Smith.

1 1469. Medical records on April 9th, 2021, reflect the statement, “[F]amily was requesting
2 discharge at 12 hours of life.”

3 1470. Mr. and Mrs. Smith requested at approximately 12-hours of Plaintiff newborn
4 baby J.A.S.’s life that the Smith Family be discharged from Defendant St. Luke’s
5 Hospital when practicable, not immediately at 12 hours from birth, as is suggested in the
6 medical records entered by Defendant St. Luke’s Hospital agents, employees, and/or
7 assigns.

8 1471. Defendants St. Luke’s Hospital and Onsite Neonatal, through their agents,
9 employees, or assigns, was further attempting to imply that Plaintiff Mrs. Smith was
10 urgently seeking to go home so that Plaintiff could consume methamphetamine by
11 making the medical records appear that Plaintiff Mrs. Smith quickly sought to reingest
12 methamphetamine by going home as soon as possible after her newborn baby’s birth.

13 1472. Beginning on April 10th, 2021 the statement, “High probability of life[-]threatening
14 clinical deterioration in infant’s condition without treatment,” began regularly appearing
15 in medical records.

16 1473. Plaintiffs Mr. and Mrs. Smith were not ever told by any agent, employee, or
17 assign of Defendants St. Luke’s Hospital or Onsite Neonatal that Plaintiff Newborn baby
18 J.A.S. had a, “High probability of life[-]threatening clinical deterioration...without
19 treatment.”

20 1474. Despite the accusation of methamphetamine use by Defendants St. Luke’s
21 Hospital and Onsite Neonatal and their agents, assigns, or employees, Plaintiff Mrs.
22 Smith was allowed to breastfeed Plaintiff Newborn baby J.A.S.

1 1475. Despite Plaintiffs Mrs. Smith and Newborn baby J.A.S. being suspected of
2 methamphetamine addiction, state mandated policies and procedures for
3 methamphetamine withdrawal were not implemented for Plaintiff Newborn baby J.A.S.
4 by Defendants St. Luke's Hospital, Onsite Neonatal, nor any other health provider.

5 1476. Notes on medical records by non-radiology experts from April 11th, 2021, stated
6 that, "...upon admission to the NICU [Plaintiff newborn baby J.A.S.] showed hazy lung
7 fields with expansion to 5-9 ribs."

8 1477. Radiology indicates in the medical record no "hazy lung fields" or "expansion"
9 into Plaintiff Newborn baby J.A.S.'s lungs.

10 1478. Radiology, instead indicates in the medical record, "Perhaps minimal asymmetric
11 granular opacity on the right. No consolidation. No discernable pneumothorax or
12 layering pleural effusion on limited supine imaging. Osseous structures appear within
13 normal limits for patient age."

14 1479. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
15 and other parties named and unnamed in this lawsuit, manipulated the medical records
16 in their own interpretations of the radiologist's report to paint Plaintiffs Newborn baby
17 J.A.S. and Mrs. Smith as methamphetamine addicts by constructing a reason to keep
18 Plaintiff newborn baby J.A.S. in the hospital against the will and consent of Mr. and Mrs.
19 Smith.

20 1480. As represented in the medical documentation, beginning on April 10th, 2021,
21 Plaintiff Mrs. Smith was under constant monitoring by all Defendants St. Luke's Hospital
22 and Onsite Neonatal for "inappropriate behavior" via their agents, employees, and/or
23 assigns.

1 1481. As of April 9th, 2021, Plaintiff Mr. Smith was not allowed to ever be on Defendant
2 St. Luke's Hospital's property at the consequence of being arrested.

3 1482. As of April 10th, 2021, Plaintiff Mrs. Smith was supervised around the clock by
4 Defendant St. Luke's Hospital male security guards, even while breastfeeding, and
5 walking to the restroom.

6 **The Libelous Statement**

7 1483. Defendants Ms. Patricia Bates, CRNP, and Mr. Patrick Philpot, DO supported the
8 hostile atmosphere intentionally created by Defendants St. Luke's Hospital and Onsite
9 Neonatal against the Plaintiff Smith Family.

10 1484. Defendant Ms. Patricia Bates, CRNP stated on April 12th, 2021 in Plaintiff
11 Newborn baby J.A.S.'s medical records, "Maternal UDS positive for
12 methamphetamines".

13 1485. Defendant Mr. Patrick Philpot, DO, on April 12th, 2021, electronically signed
14 Defendant Ms. Bates's representation in the medical records that Plaintiff Mrs. Smith
15 tested positive for methamphetamines thereby adding the weight of his position to the
16 attestations represented in the medical records by Defendant Ms. Bates.

17 1486. Plaintiff Mrs. Smith did not ever test positive for methamphetamines.

18 1487. There is not any valid reason to place a mother's medical information in her
19 newborn child's medical records, as that is a violation of the mother's right to medical
20 privacy; each individuals medical records should only represent themselves.

21 1488. There is not any valid reason to place false medical information about a mother
22 in her newborn child's medical records.

1 1489. A likely reason to place false medical information about a newborn child's mother
2 in that child's medical records is to attempt to color Plaintiff Mrs. Smith as an illegal
3 methamphetamine user and by extension the deleterious effects of methamphetamine
4 use were passed on to her newborn baby.

5 Libel Per Se III(a)

6 1490. The statement in Plaintiff Newborn baby J.A.S.'s medical records as represented
7 by Defendant Ms. Patricia Bates, CRNP, and ratified with the weight of authority by
8 Defendant Mr. Patrick Philpot, DO, that "Maternal UDS positive for methamphetamines,"
9 harmed the reputation of Plaintiffs Mr. Smith and Newborn baby J.A.S. in the estimation
10 of the community by stating that Plaintiff Mrs. Smith is a user of illegal of
11 methamphetamines and that she and her Plaintiff son Newborn child J.A.S. were
12 suffering from the deleterious effects of illegal and harmful substances.

13 1491. The defamatory statement is harmful in character because it states that Plaintiff
14 Mrs. Smith has abused the illegal and harmful substance of methamphetamine and that
15 she passed that harm onto her child Plaintiff Newborn baby J.A.S.

16 1492. Defendants Patricia Bates, CRNP, and, Mr. Patrick Philpot, DO, published the
17 defamatory statement in Plaintiff Newborn baby J.A.S.'s medical records where the
18 statements were read by every medical provider who thereafter consulted Plaintiff
19 Newborn baby J.A.S.'s medical records for an update on his status, as well as, other
20 state parties when they became involved in investigating the Smith Family.

21 1493. Upon information and belief, it can be demonstrated through Defendant
22 testimonies, examinations of medical records, and hospital policies, such as, in-person,

1 around the clock surveillance of a breastfeeding mother by male hospital security
2 officers, that recipients of the publication understood that the meaning of the publication
3 was that Plaintiff Mrs. Smith had ingested illegal methamphetamines.

4 1494. Since the defamatory statement is contained within Plaintiff Newborn baby
5 J.A.S.'s medical records, and because Plaintiff Mrs. Smith is the mother of Plaintiff
6 Newborn baby J.A.S. it was clear that the defamatory statement was to be applied to
7 both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

8 1495. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
9 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
10 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to
11 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
12 each other's invalid moral positions leading other staff to regard their inappropriate
13 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
14 considered abused by his mother through her use of illegal drugs, by Defendants St.
15 Luke's Hospital and Onsite Neonatal through their agents, employees, or assigns,
16 Defendants Ms. Patricia Bates, CRNP, and, Mr. Patrick Philpot, DO.

17 1496. Upon information and belief, Defendants St. Luke's Hospital and Onsite
18 Neonatal, through their agents, employees, or assigns, Defendants Ms. Patricia Bates,
19 CRNP, and, Mr. Patrick Philpot, DO, abused their conditionally privileged occasion
20 when as medical providers with the ability to alter and manipulate medical records, did
21 falsify those records through the published defamatory statement.

22 1497. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
23 public figures.

1 1498. Since this is a case of a private figure plaintiff redressing issues of private
2 concern, the appropriate standard for this libel claim is one of negligence.

3 1499. Negligence: (1) Medical providers with the ability to alter medical records are
4 required to maintain true and accurate records.

5 1500. Negligence: (2) Defendant medical providers Ms. Patricia Bates, CRNP, and, Mr.
6 Patrick Philpot, DO did not maintain true and accurate medical records when Defendant
7 Ms. Bates, CRNP represented in Plaintiff Newborn baby J.A.S.'s medical records that
8 Plaintiff Mrs. Smith "...tested positive for methamphetamines," and then Defendant Mr.
9 Philpot, DO certified Defendant Ms. Bates, CRNP's representation in Plaintiff
10 Newborn baby J.A.S.'s medical records.

11 1501. Negligence: (3) Upon information and belief, but for the actions of the Defendants
12 attesting to Plaintiff Mrs. Smith as a methamphetamine user, Mrs. Smith would not have
13 suffered the aforementioned harms and indignities mentioned earlier in this allegation of
14 libelous defamation, as well, it is likely that Mrs. Smith would not have had pervasive
15 and injurious inquiries about private family matters by state officials.

16 1502. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
17 Defendants' conduct, including but not limited to, emotional and psychological distress,
18 pain and suffering, and injury to their reputations.

19 1503. In *libel per se* cases Pennsylvania defamation law considers "Words that on their
20 face and without the aid of extrinsic evidence are recognized as injurious are actionable
21 per se...."⁷⁸

⁷⁸*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

1 1504. Upon information and belief, Defendants' directly and unequivocally accused
2 Plaintiff Mrs. Smith of being a methamphetamine user in her newborn child's medical
3 records which are on their face and without the aid of extrinsic evidence injurious, and
4 actionable for a *libel per se* claim.

5 1505. In *libel pe se* cases, Pennsylvania law observes that, "words imputing a criminal
6 offense, loathsome disease, business misconduct or serious sexual misconduct" will be
7 considered defamatory per se.⁷⁹

8 1506. Since Defendants' directly and unequivocally accused Plaintiff Mrs. Smith of
9 being a methamphetamine user in her newborn child's medical records, and since
10 methamphetamine is an illegal controlled substance, the Defendants' imputed a criminal
11 offense, thereby making this an actionable *libel per se* claim.

12 1507. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
13 evidence that the Defendants St. Luke's Hospital and/or Onsite Neonatal supervised
14 Ms. Patricia Bates, CRNP, and, Mr. Patrick Philpot, DO in connection with this
15 allegation and are therefore liable under a legal theory of respondeat superior.

16 1508. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
17 and Defendants Ms. Patricia Bates, CRNP, and, Mr. Patrick Philpot, DO's conduct
18 violated Plaintiffs' rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

19 *Or, In the Alternative,*

20 *Libel Per Quod III(b)*

⁷⁹*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 1509. The statement in Plaintiff Newborn baby J.A.S.'s medical records as represented
2 by Defendant Ms. Patricia Bates, CRNP, and ratified with the weight of authority by
3 Defendant Mr. Patrick Philpot, DO, that "Maternal UDS positive for methamphetamines,"
4 harmed the reputation of Plaintiffs Mr. Smith and Newborn baby J.A.S. in the estimation
5 of the community by stating that Plaintiff Mrs. Smith is a user of illegal of
6 methamphetamines and that she and her Plaintiff son Newborn child J.A.S. suffered
7 from the deleterious effects of illegal and harmful substances.

8 1510. The defamatory statement is harmful in character because it states that Plaintiff
9 Mrs. Smith had ingested the illegal and harmful substance methamphetamine and that
10 she passed the deleterious effects onto her child Plaintiff Newborn baby J.A.S., who
11 became supposed to be a "meth baby".

12 1511. Defendants Patricia Bates, CRNP, and, Mr. Patrick Philpot, DO, published the
13 defamatory statement in Plaintiff Newborn baby J.A.S.'s medical records where the
14 statements were read by every medical provider who thereafter consulted Plaintiff
15 Newborn baby J.A.S.'s medical records for an update on his status, as well as, other
16 state parties when they became involved in investigating the Smith Family.

17 1512. Upon information and belief, it can be demonstrated through Defendant
18 testimonies, examinations of medical records, and hospital policies, such as, in-person,
19 around the clock surveillance of a breastfeeding mother by male hospital security
20 officers, that recipients of the publication understood that the meaning of the publication
21 was that Plaintiff Mrs. Smith had ingested illegal methamphetamines.

22 1513. Since the defamatory statement is contained within Plaintiff Newborn baby
23 J.A.S.'s medical records, and because Plaintiff Mrs. Smith is the mother of Plaintiff

1 Newborn baby J.A.S. it was clear that the defamatory statement was to be applied to
2 both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

3 1514. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
4 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
5 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to
6 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
7 each other's invalid moral positions leading other staff to regard their inappropriate
8 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
9 considered to be suffering the deleterious effects of his mother's illegal drug use, by
10 Defendants St. Luke's Hospital and Onsite Neonatal through their agents, employees,
11 or assigns, Defendants Ms. Patricia Bates, CRNP, and, Mr. Patrick Philpot, DO.

12 1515. Upon information and belief, Defendants St. Luke's Hospital and Onsite
13 Neonatal, through their agents, employees, or assigns, Defendants Ms. Patricia Bates,
14 CRNP, and, Mr. Patrick Philpot, DO, abused their conditionally privileged occasion
15 when as medical providers with the ability to alter and manipulate medical records, did
16 falsify those records through the published defamatory statement.

17 1516. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
18 public figures.

19 1517. Since this is a case of a private figure plaintiff redressing issues of private
20 concern, the appropriate standard for this libel claim is one of negligence.

21 1518. Negligence: (1) Medical providers with the ability to alter medical records are
22 required to maintain true and accurate records.

1 1519. Negligence: (2) Defendant medical providers Ms. Patricia Bates, CRNP, and, Mr.
2 Patrick Philpot, DO did not maintain true and accurate medical records when Defendant
3 Ms. Bates, CRNP represented in Plaintiff Newborn baby J.A.S.'s medical records that
4 Plaintiff Mrs. Smith "...tested positive for methamphetamines," and then Defendant Mr.
5 Philpot, DO certified Defendant Ms. Bates, CRNP's representation in Plaintiff Newborn
6 baby J.A.S.'s medical records.

7 1520. Negligence: (3) Upon information and belief, but for the actions of the Defendants
8 attesting to Plaintiff Mrs. Smith as a methamphetamine user, Plaintiff Mrs. Smith would
9 not have suffered the aforementioned harms and indignities mentioned earlier in this
10 allegation of libelous defamation, as well, it is likely that Plaintiff Mrs. Smith would not
11 have had pervasive and injurious inquiries about private family matters by state officials.

12 1521. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
13 Defendants' conduct, including but not limited to, emotional and psychological distress,
14 pain and suffering, and injury to their reputations.

15 1522. In *libel per quod* cases Pennsylvania defamation law considers extrinsic
16 supporting evidence of libelous behavior if the injurious nature of the words is not
17 apparent.⁸⁰

18 1523. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
19 evidence that through the presentation of medical records, police reports, and other
20 administrative documentation that the libelous statement was not a mere description of
21 the mother for the medical edification of potential diagnosis concerning Plaintiff

⁸⁰Joseph, 959 A.2d at n.23.

1 Newborn baby J.A.S., but was instead a statement intended to cast unfounded and
2 harmful aspersions on both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

3 1524. Plaintiffs will need to demonstrate necessary innuendo by Defendant Parties.

4 1525. “Innuendo”, “define[s] the defamatory meaning which the plaintiff attaches to the
5 words” and “show[s] how they come to have that meaning and how they relate to the
6 plaintiff.”⁸¹

7 1526. Methamphetamine is an illegal controlled substance, which has deleterious
8 effects on those that consume it.

9 1527. Deleterious effects caused by methamphetamine when consumed by a pregnant
10 mother will likely be passed on to her child in utero via the umbilical cord.

11 1528. When Defendants Ms. Patricia Bates, CRNP, represented the libelous statement,
12 and Mr. Patrick Philpot, DO certified that statement with the weight of the authority of his
13 position it was to make clear to other medical professionals, administrators, and/or state
14 personnel that Plaintiff Mrs. Smith consumed methamphetamine and that she likely
15 passed on the deleterious effects of methamphetamine use to her child Plaintiff
16 Newborn baby J.A.S.

17 1529. The libelous statement relates to the Plaintiffs newborn baby J.A.S. and Mrs.
18 Smith because the statement is about Plaintiff Mrs. Smith, and it is in Plaintiff Newborn
19 baby J.A.S.’s medical records.

⁸¹*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962) (citations omitted).

1 1530. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that the Defendants St. Luke's Hospital and/or Onsite Neonatal supervised
3 Ms. Patricia Bates, CRNP, and, Mr. Patrick Philpot, DO in connection with this
4 allegation and are therefore liable under a legal theory of respondeat superior.

5 1531. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
6 and Defendants Ms. Patricia Bates, CRNP, and, Mr. Patrick Philpot, DO's conduct
7 violated Plaintiffs' rights under Pennsylvania Statute *42 Pa. C.S. § 8343* for defamation.

8 *Or, In the Alternative*

9 *Libel by Implication III(c)*

10 **Additional Context**

11 1532. On the evening of April 10th, 2021, before Plaintiff Mrs. Smith was reunited with
12 Plaintiff Newborn baby J.A.S., Defendant Mr. Patrick Philpot, DO created an addendum
13 to Plaintiff Newborn baby J.A.S.'s medical records.

14 1533. The addendum written by Defendant Mr. Patrick Philpot, DO is as follows:

15 "Ongoing social concerns discussed with NICU medical director,
16 Dr. Costello, and Charge RN Mary following input from SL on-call CM. Dr.
17 Costello spoke with St. Luke's legal representative, Steve, who has been
18 involved with the case. Per legal, FOB is unable to visit patient as he was
19 given a no-trespassing order by Bethlehem Township police yesterday.
20 As mother has been appropriate throughout the day and has not been
21 involved in legal actions, per Steve in SL legal, mother may visit with
22 supervision. SLRA hospital supervisor spoke with charge RN Mary as

1 well as Darla Frack, hospital administrator, and plan going forward will be
2 that if mother visits, she can be allowed into the NICU with security
3 supervision within the baby's NICU pod. MOB may only visit alone per St.
4 Luke's visitation policy allowing only parents to visit and FOB may not
5 visit. If MOB's behavior is inappropriate, she will not be allowed to visit the
6 NICU until the baby is cleared for discharge by CYS."

7 **The Libelous Statement & Implication**

8 1534. Defendant Mr. Patrick Philpot, DO supported the hostile atmosphere intentionally
9 created by Defendants St. Luke's Hospital and Onsite Neonatal against the Plaintiff
10 Smith Family.

11 1535. Defendant Mr. Patrick Philpot, DO stated on April 10th, 2021 in Plaintiff Newborn
12 baby J.A.S.'s medical records, "If MOB's behavior is inappropriate, she will not be
13 allowed to visit the NICU until the baby is cleared for discharge by CYS".

14 1536. Plaintiff Mrs. Smith was not ever told by any party that her behavior was being
15 monitored, nor what appropriate versus inappropriate behavior consists of.

16 1537. There is not any valid reason to place a mother's behavioral status in her
17 newborn child's medical records.

18 1538. A likely reason to place behavioral status information about a newborn child's
19 mother in that child's medical records is to attempt to color Plaintiff Mrs. Smith as a
20 potentially irrational illegal methamphetamine user and that by extension her newborn
21 baby suffered from the deleterious effects of the methamphetamine ingestion.

1 1539. The statement in Plaintiff Newborn baby J.A.S.'s medical records as represented
2 by Defendant Mr. Patrick Philpot, DO, that "If MOB's behavior is inappropriate, she will
3 not be allowed to visit the NICU until the baby is cleared for discharge by CYS," harmed
4 the reputation of Plaintiffs Mr. Smith and Newborn baby J.A.S. in the estimation of the
5 community by implying that Plaintiff Mrs. Smith is an irrational user of illegal of
6 methamphetamines and that she and her Plaintiff son Newborn child J.A.S. suffered
7 from the deleterious effects of illegal and harmful substances.

8 1540. The defamatory statement is harmful in character because it implies that Plaintiff
9 Mrs. Smith is an irrational decision maker who has ingested the illegal and harmful
10 substance of methamphetamine and that she passed that harm onto her child Plaintiff
11 Newborn baby J.A.S., who became supposed to be a "meth baby".

12 1541. Defendant Mr. Patrick Philpot, DO, published the defamatory statement in
13 Plaintiff Newborn baby J.A.S.'s medical records as an addendum where the statements
14 were read by every medical provider who thereafter consulted Plaintiff Newborn baby
15 J.A.S.'s medical records for an update on his status, as well as, other state parties when
16 they became involved in investigating the Smith Family.

17 1542. Upon information and belief, it can be demonstrated through Defendant
18 testimonies, examinations of medical records, and hospital policies, such as, in-person,
19 around the clock surveillance of a breastfeeding mother by male hospital security
20 officers, that recipients of the publication understood that the meaning of the publication
21 was that Plaintiff Mrs. Smith had ingested illegal methamphetamine.

22 1543. Since the defamatory statement is contained within Plaintiff Newborn baby
23 J.A.S.'s medical records, and because Plaintiff Mrs. Smith is the mother of Plaintiff

1 Newborn baby J.A.S. it was clear that the defamatory statement was to be applied to
2 both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

3 1544. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
4 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
5 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to
6 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
7 each other's invalid moral positions leading other staff to regard their inappropriate
8 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
9 considered abused by his mother through her use of illegal drugs, by Defendants St.
10 Luke's Hospital and Onsite Neonatal through their agent, employee, or assign,
11 Defendant Mr. Patrick Philpot, DO.

12 1545. Upon information and belief, Defendants St. Luke's Hospital and Onsite
13 Neonatal, through their agent, employee, or assign, Defendant Mr. Patrick Philpot, DO,
14 abused his conditionally privileged occasion when as a medical provider with the ability
15 to alter and manipulate medical records, did write true statements in those records,
16 including the published defamatory statement.

17 1546. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
18 public figures.

19 1547. Since this is a case of a private figure plaintiff redressing issues of private
20 concern, the appropriate standard for this libel claim is one of negligence.

21 1548. Negligence: (1) Medical providers with the ability to alter medical records are
22 required to maintain medical records that reflect the truth of a matter in both itemized
23 mentions of fact and the totality of what those facts are to represent.

1 1549. Negligence: (2) Defendant medical provider Defendant Mr. Patrick Philpot, DO
2 did maintain true and accurate medical records when itemized mentions of fact were
3 read in isolation from one another; however, when taken as a totality the facts present
4 the Plaintiffs in a harmful and dishonest light, culminating with when Defendant Mr.
5 Patrick Philpot, DO represented in Plaintiff Newborn baby J.A.S.'s medical records that
6 Plaintiff Mrs. Smith's behavior was to be monitored and that she could and should be
7 removed from the property at Defendant St. Luke's Hospital's because of implied
8 'inappropriate behavior'.

9 1550. Negligence: (3) Upon information and belief, but for the actions of the Defendant
10 implying that Plaintiff Mrs. Smith was a methamphetamine user, Plaintiff Mrs. Smith
11 would not have suffered the aforementioned harms and indignities mentioned earlier in
12 this allegation of libelous defamation, as well, it is likely that Plaintiff Mrs. Smith would
13 not have had pervasive and injurious inquiries about private family matters by state
14 officials.

15 1551. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
16 Defendant's conduct, including but not limited to, emotional and psychological distress,
17 pain and suffering, and injury to their reputations.

18 1552. Libel by Implication occurs when "true facts that in context imply a falsehood."⁸²

⁸²*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

1 1553. In addition, “the literal accuracy of separate statements will not render a
2 communication ‘true’ where, as here, the implication of the communication as a whole
3 was false.”⁸³

4 1554. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
5 demonstrate by a preponderance of the evidence that any one statement in Plaintiff
6 Newborn baby J.A.S.’s medical records may be true, but the implication of the
7 communications as a whole in Plaintiff Newborn baby J.A.S.’s medical records is false.

8 1555. As well, if “the defendant juxtaposes [a] series of fact so as to imply a defamatory
9 connection between them, or [otherwise] creates a defamatory implication...” then a
10 libelous statement by implication is present.⁸⁴

11 1556. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
12 demonstrate by a preponderance of the evidence that many facts contained within
13 Plaintiff Newborn baby J.A.S.’s medical records juxtapose a series of facts so as to
14 imply a defamatory connection of methamphetamine ingestion by Plaintiff Mrs. Smith,
15 the deleterious effects of which were passed on to Plaintiff Newborn baby J.A.S.

16 1557. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
17 evidence that the Defendants Private Entities St. Luke’s Hospital and/or Onsite
18 Neonatal supervised Mr. Patrick Philpot, DO, in connection with this allegation and are
19 therefore liable under a legal theory of respondeat superior.

⁸³*Id.* at 493.

⁸⁴*Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 1558. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
2 and Defendants Ms. Patricia Bates, CRNP, and, Mr. Patrick Philpot, DO's conduct
3 violated Plaintiffs' rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

4 **Damages for Libel III(a-c)**

5 1559. Plaintiff Mrs. Smith suffered substantial harm as a result of Defendants' conduct,
6 including but not limited to, emotional and psychological distress, pain and suffering,
7 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
8 compensatory damages to account for PTSD therapies and other related treatments as
9 they have been and will continue to be necessary; Plaintiffs respectfully request an
10 amount of \$595,000 in compensatory damages per Defendant.

11 1560. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
12 Neonatal, Ms. Patricia Bates, CRNP, and, Mr. Patrick Philpot, DO, and therefore, their
13 ability to afford the appropriate training to avoid this egregious violation of the
14 Pennsylvania Statutory Law, and, since harm was actually caused to the current Plaintiff
15 Smith Family, and since harm is likely to continue to harm future postpartum families,
16 and because the acts of the Defendants and their agents, assigns, or employees
17 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the
18 Plaintiffs respectfully request the imposition of punitive damages on Defendants St.
19 Luke's Hospital, Onsite Neonatal, Ms. Patricia Bates, CRNP, and, Mr. Patrick Philpot,
20 DO to deter such Defendants from committing to such conduct in the future which
21 violates Commonwealth of Pennsylvania Statutory Law Plaintiffs respectfully request an
22 amount of \$1,000,000 in punitive damages per Defendant Ms. Patricia Bates, CRNP;

1 \$5,000,000 per Defendant Mr. Patrick Philpot, DO; and \$10,000,000 per Defendants

2 Luke's Hospital, Onsite Neonatal, and OBHG PA.

3 1561. In the unlikely event that the jury does not find that Plaintiffs Mrs. Smith and

4 Newborn baby J.A.S. suffered any actual injury despite the deprivation of their statutory

5 law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

6 **XXV. § 42 Pa. C. S. § 8343, Defamation - Libel IV**

7 Newborn baby J.A.S. and Mrs. Grace Smith v. St. Luke's Hospital, Onsite Neonatal,

8 Ms. Chaminie Wheeler, DO, & Mr. Gilberto I. Santiago, MD

9 1562. Under Pennsylvania defamation law, a communication will be considered

10 defamatory if it "tends so to harm the reputation of [the complaining party] as to lower

11 him in the estimation of the community or to deter third persons from associating or

12 dealing with him."⁸⁵

13 1563. In order for Plaintiffs to succeed in their claim, they must prove the following

14 elements⁸⁶.

15 (1) The defamatory character of the communication;

16 (2) Its publication by the defendant;

17 (3) Its application to the plaintiff;

⁸⁵*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

⁸⁶42 Pa.C.S. § 8343(a)(1-7).

1 (4) The understanding by the recipient of its defamatory meaning;

2 (5) The understanding by the recipient of it as intended to be applied to the plaintiff;

3 (6) Special harm resulting to the plaintiff from its publication; and

4 (7) Abuse of a conditionally privileged occasion.

5 1564. The Pennsylvania Supreme Court has abolished an “actual malice” standard and
6 has shifted the inquiry to whether a plaintiff is a private individual or a public figure or
7 public official.⁸⁷

8 1565. Pennsylvania has adopted a negligence standard for private figure plaintiff
9 lawsuits regarding issues of private concern.⁸⁸

10 1566. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
11 or obligation recognized by the law, requiring the actor to conform to a certain standard
12 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
13 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
14 the interests of another.⁸⁹

15 **The Context**

⁸⁷*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the plaintiff can lead to wider array of potential damages.

⁸⁸*Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

⁸⁹*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 1567. Defendants St. Luke's Hospital and Onsite Neonatal, among other parties named
2 and unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
3 Family, including Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

4 1568. Defendants Ms. Chaminie Wheeler, DO, and Mr. Gilberto I. Santiago, MD,
5 supported the hostile atmosphere intentionally created by Defendants St. Luke's
6 Hospital and Onsite Neonatal.

7 1569. Defendants St. Luke's Hospital and Onsite Neonatal coordinated their
8 employees, agents, or assigns, including Defendants Ms. Chaminie Wheeler, DO, and
9 Mr. Gilberto I. Santiago, MD, towards a narrative that Plaintiff Mrs. Smith ingested
10 methamphetamine and that Plaintiff Mrs. Smith gave birth to Plaintiff Newborn baby
11 J.A.S. who also suffered from the deleterious effects of methamphetamine.

12 1570. The umbilical cord that connected Plaintiffs Newborn baby J.A.S. and Mrs. Smith
13 was tested on April 9th, 2021, and was negative for amphetamines and
14 methamphetamines.

15 1571. Despite the umbilical cord that connected Plaintiffs Newborn baby J.A.S. and
16 Mrs. Smith testing negative for illegal drugs, Defendants St. Luke's Hospital and Onsite
17 Neonatal, acting through agents, employees, or assigns Defendants Ms. Chaminie
18 Wheeler, DO, and Mr. Gilberto I. Santiago, MD, continued the narrative that Plaintiff
19 Mrs. Smith ingested methamphetamine and that Plaintiff Mrs. Smith gave birth to
20 Plaintiff Newborn baby J.A.S. who suffered the deleterious effects of methamphetamine
21 use.

22 1572. Medical records on April 9th, 2021, reflect the statement, "[F]amily was requesting
23 discharge at 12 hours of life."

1 1573. Plaintiffs Mr. and Mrs. Smith requested at approximately 12-hours of Plaintiff
2 Newborn baby J.A.S.'s life that the Smith Family be discharged from Defendant St.
3 Luke's Hospital when practicable, not immediately at 12 hours from birth, as is
4 suggested in the medical records entered by Defendant St. Luke's Hospital agents,
5 employees, and/or assigns.

6 1574. Defendant St. Luke's Hospital and Onsite Neonatal, through their agents,
7 employees, or assigns, was further attempting to imply that Plaintiff Mrs. Smith was
8 urgently seeking to go home so that she could consume methamphetamine by making
9 the medical records appear that Plaintiff Mrs. Smith quickly sought to reingest
10 methamphetamine by going home as soon as possible after her newborn baby's birth.

11 1575. Beginning on April 10th, 2021 the statement, "High probability of life[-]threatening
12 clinical deterioration in infant's condition without treatment," began regularly appearing
13 in medical records.

14 1576. Mr. and Mrs. Smith were not ever told by any agent, employee, or assign of
15 Defendants St. Luke's Hospital or Onsite Neonatal that Plaintiff Newborn baby J.A.S.
16 had a, "High probability of life[-]threatening clinical deterioration...without treatment."

17 1577. Despite the accusation of methamphetamine use by Defendants St. Luke's
18 Hospital and Onsite Neonatal and their agents, assigns, or employees, Plaintiff Mrs.
19 Smith was allowed to breastfeed Plaintiff Newborn baby J.A.S.

20 1578. Despite Plaintiffs Mrs. Smith and Newborn baby J.A.S. being suspected of
21 suffering the deleterious effects of methamphetamine ingestion, state mandated policies
22 and procedures for methamphetamine withdrawal were not implemented for Plaintiff

1 Newborn baby J.A.S. by Defendants St. Luke's Hospital, Onsite Neonatal, nor any other
2 health provider.

3 1579. Notes on medical records by non-radiology experts from April 11th, 2021, stated
4 that, "...upon admission to the NICU [newborn baby J.A.S.] showed hazy lung fields
5 with expansion to 5-9 ribs."

6 1580. Radiology indicates in the medical record no "hazy lung fields" or "expansion"
7 into Plaintiff Newborn baby J.A.S.'s lungs.

8 1581. Radiology, instead indicates in the medical record, "Perhaps minimal asymmetric
9 granular opacity on the right. No consolidation. No discernable pneumothorax or
10 layering pleural effusion on limited supine imaging. Osseous structures appear within
11 normal limits for patient age."

12 1582. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
13 and other parties named and unnamed in this lawsuit, manipulated the medical records
14 in their own interpretations of the radiologist's report to paint Plaintiffs Newborn baby
15 J.A.S. and Mrs. Smith as suffering the deleterious effects of methamphetamine
16 ingestion by constructing a reason to keep Plaintiff Newborn baby J.A.S. in the hospital
17 against the will and consent of his parents.

18 1583. As represented in the medical documentation, beginning on April 10th, 2021,
19 Plaintiff Mrs. Smith was under constant monitoring by all Defendants St. Luke's Hospital
20 and Onsite Neonatal for "inappropriate behavior" via their agents, employees, and/or
21 assigns.

22 1584. As of April 9th, 2021, Mr. Smith was not allowed to ever be on Defendant St.
23 Luke's Hospital's property at the consequence of being arrested.

1 1585. As of April 10th, 2021, Plaintiff Mrs. Smith was supervised around the clock by
2 male security guards, even while breastfeeding and walking to the restroom.

3 **The Libelous Statement**

4 1586. Defendants Ms. Chaminie Wheeler, DO, and Mr. Gilberto I. Santiago, MD
5 supported the hostile atmosphere intentionally created by Defendants St. Luke's
6 Hospital and Onsite Neonatal against the Plaintiff Smith Family.

7 1587. Defendant Mr. Gilberto I. Santiago, MD represented on April 9th, 2021 in Plaintiff
8 Newborn baby J.A.S.'s medical records, under a section heading of "Prenatal History"
9 and in reference to Plaintiff Mrs. Smith, "UDS positive for methamphetamines: hx ADHD
10 on Vyvanse".

11 1588. Defendant Ms. Chaminie Wheeler, DO, on April 16th, 2021, electronically signed
12 Defendant Mr. Gilberto I. Santiago, MD's representation in the medical records that
13 Plaintiff Mrs. Smith tested positive for methamphetamine thereby adding the weight of
14 her position to the attestations represented in the medical records by Defendant Mr.
15 Gilberto I. Santiago, MD.

16 1589. Plaintiff Mrs. Smith did not ever test positive for methamphetamine.

17 1590. There is not any valid reason to place a mother's medical information in her
18 newborn child's medical records, as that is a violation of the mother's right to medical
19 privacy; each individual's medical records should only represent themselves.

20 1591. There is not any valid reason to place false medical information about a mother
21 in her newborn child's medical records.

1 1592. A likely reason to place false medical information about a newborn child's mother
2 in that child's medical records is to attempt to color Plaintiff Mrs. Smith as an illegal
3 methamphetamine user and that by extension her Plaintiff Newborn baby J.A.S.
4 suffered the deleterious effects of methamphetamine.

5 Libel Per Se IV(a)

6 1593. The statement in Plaintiff Newborn baby J.A.S.'s medical records as represented
7 by Defendant Mr. Gilberto I. Santiago, MD, and ratified with the weight of authority by
8 Defendant Ms. Chaminie Wheeler, DO, that maternal "UDS positive for
9 methamphetamines," harmed the reputation of Plaintiffs Mr. Smith and newborn baby
10 J.A.S. in the estimation of the community by stating that Plaintiff Mrs. Smith is a user of
11 illegal of methamphetamines and that she and her newborn child J.A.S. suffered the
12 deleterious effects of illegal and harmful substances.

13 1594. The defamatory statement is harmful in character because it states that Plaintiff
14 Mrs. Smith has ingested the illegal and harmful substance of methamphetamine and
15 that she passed the deleterious effects onto her child son Plaintiff Newborn baby J.A.S.

16 1595. Defendants Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO,
17 published the defamatory statement in Plaintiff Newborn baby J.A.S.'s medical records
18 where the statements were read by every medical provider who thereafter consulted
19 Plaintiff Newborn baby J.A.S.'s medical records for an update or history on his status,
20 as well as, other state parties when they became involved in investigating the Smith
21 Family.

1 1596. Upon information and belief, it can be demonstrated through Defendant
2 testimonies, examinations of medical records, and hospital policies, such as, in-person,
3 around the clock surveillance of a breastfeeding mother by male hospital security
4 officers, that recipients of the publication understood that the meaning of the publication
5 was that Plaintiff Mrs. Smith had ingested illegal methamphetamine.

6 1597. Since the defamatory statement is contained within Plaintiff Newborn baby
7 J.A.S.'s medical records, and because Plaintiff Mrs. Smith is the mother of Plaintiff
8 Newborn baby J.A.S. it was clear that the defamatory statement was to be applied to
9 both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

10 1598. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
11 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
12 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to
13 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
14 each other's invalid moral positions leading other staff to regard their inappropriate
15 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
16 considered abused by his mother through her use of illegal drugs, by Defendants St.
17 Luke's Hospital and Onsite Neonatal through their agents, employees, or assigns,
18 Defendants Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO.

19 1599. Upon information and belief, Defendants St. Luke's Hospital and Onsite
20 Neonatal, through their agents, employees, or assigns, Defendants Mr. Gilberto I.
21 Santiago, MD, and, Ms. Chaminie Wheeler, DO, abused their conditionally privileged
22 occasion when as medical providers with the ability to alter and manipulate medical
23 records, did falsify those records through the published defamatory statement.

1 1600. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
2 public figures.

3 1601. Since this is a case of a private figure plaintiff redressing issues of private
4 concern, the appropriate standard for this libel claim is one of negligence.

5 1602. Negligence: (1) Medical providers with the ability to alter medical records are
6 required to maintain true and accurate records.

7 1603. Negligence: (2) Defendant medical providers Mr. Gilberto I. Santiago, MD, and,
8 Ms. Chaminie Wheeler, DO did not maintain true and accurate medical records when
9 Defendant Mr. Gilberto I. Santiago, MD represented in Plaintiff Newborn baby J.A.S.'s
10 medical records that Plaintiff Mrs. Smith "...tested positive for methamphetamines," and
11 then Defendant Ms. Chaminie Wheeler, DO certified Defendant Mr. Gilberto I. Santiago,
12 MD's representation in Plaintiff Newborn baby J.A.S.'s medical records.

13 1604. Negligence: (3) Upon information and belief, but for the actions of the Defendants
14 attesting to Plaintiff Mrs. Smith as a methamphetamine user, Plaintiff Mrs. Smith would
15 not have suffered the aforementioned harms and indignities mentioned earlier in this
16 allegation of libelous defamation, as well, it is likely that Plaintiff Mrs. Smith would not
17 have had pervasive and injurious inquiries about private family matters by state officials.

18 1605. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
19 Defendants' conduct, including but not limited to, emotional and psychological distress,
20 pain and suffering, and injury to their reputations.

1 1606. In *libel per se* cases Pennsylvania defamation law considers “Words that on their
2 face and without the aid of extrinsic evidence are recognized as injurious are actionable
3 per se....”⁹⁰

4 1607. Upon information and belief, the Defendants’ libelous statement directly and
5 unequivocally accused Plaintiff Mrs. Smith of being a methamphetamine user in her
6 newborn child’s medical records which are on their face and without the aid of extrinsic
7 evidence injurious, and actionable for a *libel per se* claim.

8 1608. In *libel pe se* cases, Pennsylvania law observes that, “words imputing a criminal
9 offense, loathsome disease, business misconduct or serious sexual misconduct” will be
10 considered defamatory per se.⁹¹

11 1609. Since Defendants’ directly and unequivocally accused Plaintiff Mrs. Smith of
12 being a methamphetamine user in her newborn child’s medical records, and since
13 methamphetamine is an illegal controlled substance, the Defendants’ imputed a criminal
14 offense, thereby making this an actionable *libel per se* claim.

15 1610. Upon information and belief, Plaintiff can demonstrate by a preponderance of
16 evidence that the Defendants St. Luke’s Hospital and/or Onsite Neonatal supervised Mr.
17 Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO in connection with this
18 allegation and are therefore liable under a legal theory of respondeat superior.

⁹⁰*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

⁹¹*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 1611. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
2 supervised Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO's conduct
3 violated Plaintiffs' rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

4 *Or, In the Alternative,*

5 *Libel Per Quod IV(b)*

6 1612. The statement in Plaintiff Newborn baby J.A.S.'s medical records as represented
7 by Defendant Mr. Gilberto I. Santiago, MD, and ratified with the weight of authority by
8 Defendant Ms. Chaminie Wheeler, DO, that maternal "...UDS positive for
9 methamphetamines..." harmed the reputation of Plaintiffs Mrs. Smith and Newborn
10 baby J.A.S. in the estimation of the community by stating that Plaintiff Mrs. Smith is a
11 user of illegal of methamphetamines and that she and her son Plaintiff Newborn child
12 J.A.S. suffered from the deleterious effects of illegal and harmful substances.

13 1613. The defamatory statement is harmful in character because it states that
14 Defendant Mrs. Smith has ingested the illegal and harmful substance of
15 methamphetamine and that she passed the deleterious effects of that ingestion onto her
16 child Plaintiff Newborn baby J.A.S.

17 1614. Defendants Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO,
18 published the defamatory statement in Plaintiff Newborn baby J.A.S.'s medical records
19 where the statements were read by every medical provider who thereafter consulted
20 Plaintiff Newborn baby J.A.S.'s medical records for an update or history on his status,
21 as well as, other state parties when they became involved in investigating the Smith
22 Family.

1 1615. Upon information and belief, it can be demonstrated through Defendant
2 testimonies, examinations of medical records, and hospital policies, such as, in-person,
3 around the clock surveillance of a breastfeeding mother by hospital security officers,
4 that recipients of the publication understood that the meaning of the publication was that
5 Plaintiff Mrs. Smith had ingested illegal methamphetamine.

6 1616. Since the defamatory statement is contained within Plaintiff Newborn baby
7 J.A.S.'s medical records, and because Plaintiff Mrs. Smith is the mother of Plaintiff
8 Newborn baby J.A.S. it was clear that the defamatory statement was to be applied to
9 both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

10 1617. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
11 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
12 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to
13 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
14 each other's invalid moral positions leading other staff to regard their inappropriate
15 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
16 considered abused by his mother through her use of illegal drugs, by Defendants St.
17 Luke's Hospital and Onsite Neonatal through their agents, employees, or assigns,
18 Defendants Mr. Gilberto I. Santiago, MD, and, Defendant Ms. Chaminie Wheeler, DO.

19 1618. Upon information and belief, Defendants St. Luke's Hospital and Onsite
20 Neonatal, through their agents, employees, or assigns, Defendants Mr. Gilberto I.
21 Santiago, MD, and, Ms. Chaminie Wheeler, DO, abused their conditionally privileged
22 occasion when as medical providers with the ability to alter and manipulate medical
23 records, did falsify those records through the published defamatory statement.

1 1619. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
2 public figures.

3 1620. Since this is a case of a private figure plaintiff redressing issues of private
4 concern, the appropriate standard for this libel claim is one of negligence.

5 1621. Negligence: (1) Medical providers with the ability to alter medical records are
6 required to maintain true and accurate records.

7 1622. Negligence: (2) Defendant medical providers Mr. Gilberto I. Santiago, MD, and,
8 Ms. Chaminie Wheeler, DO did not maintain true and accurate medical records when
9 Defendant Mr. Gilberto I. Santiago, MD represented in Plaintiff Newborn baby J.A.S.'s
10 medical records that Plaintiff Mrs. Smith "...tested positive for methamphetamines," and
11 then Ms. Chaminie Wheeler, DO certified Mr. Santiago, MD's representation in Plaintiff
12 Newborn baby J.A.S.'s medical records.

13 1623. Negligence: (3) Upon information and belief, but for the actions of the Defendants
14 attesting to Plaintiff Mrs. Smith as a methamphetamine user, Plaintiff Mrs. Smith would
15 not have suffered the aforementioned harms and indignities mentioned earlier in this
16 allegation of libelous defamation, as well, it is likely that Plaintiff Mrs. Smith would not
17 have had pervasive and injurious inquiries about private family matters by state officials.

18 1624. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
19 Defendants' conduct, including but not limited to, emotional and psychological distress,
20 pain and suffering, and injury to their reputations.

1 1625. In *libel per quod* cases Pennsylvania defamation law considers extrinsic
2 supporting evidence of libelous behavior if the injurious nature of the words is not
3 apparent.⁹²

4 1626. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
5 evidence that through the presentation of medical records, police reports, and other
6 administrative documentation that the libelous statement was not a mere description of
7 the mother for the medical edification of potential diagnosis concerning Plaintiff
8 Newborn baby J.A.S., but was instead a statement intended to cast unfounded and
9 harmful aspersions on both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

10 1627. Plaintiffs will need to demonstrate necessary innuendo by Defendant Parties.

11 1628. “Innuendo”, “define[s] the defamatory meaning which the plaintiff attaches to the
12 words” and “show[s] how they come to have that meaning and how they relate to the
13 plaintiff.”⁹³

14 1629. Methamphetamine is an illegal controlled substance, which has deleterious
15 effects on those that consume it.

16 1630. Deleterious effects caused by methamphetamine when consumed by a pregnant
17 mother will likely be passed on to her child in utero via the umbilical cord.

18 1631. When Defendants Mr. Gilberto I. Santiago, MD, represented the libelous
19 statement, and Ms. Chaminie Wheeler, DO certified that statement with the weight of

⁹²Joseph, 959 A.2d at n.23.

⁹³*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962) (citations omitted).

1 the authority of her position it was to make clear to other medical professionals,
2 administrators, and/or state personnel that Plaintiff Mrs. Smith consumed
3 methamphetamine and that she likely passed on the deleterious effects of
4 methamphetamine use to her child Plaintiff Newborn baby J.A.S.

5 1632. The libelous statement relates to the Plaintiffs Newborn baby J.A.S. and Mrs.
6 Smith because the statement is about Plaintiff Mrs. Smith, and it is in Plaintiff Newborn
7 baby J.A.S.'s medical records.

8 1633. Upon information and belief, Plaintiff can demonstrate by a preponderance of
9 evidence that the Defendants Private Entities St. Luke's Hospital and/or Onsite
10 Neonatal supervised providers Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie
11 Wheeler, DO in connection with this allegation and are therefore liable under a legal
12 theory of respondeat superior.

13 1634. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
14 supervised Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO's conduct
15 violated Plaintiffs' rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

16 *Or, In the Alternative*

17 *Libel by Implication IV(c)*

18 **The Libelous Statement & Implication**

19 1635. Defendants Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO
20 supported the hostile atmosphere intentionally created by Defendants St. Luke's
21 Hospital and Onsite Neonatal against the Plaintiff Smith Family.

1 1636. Defendants Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler
2 represented in Plaintiff Newborn baby J.A.S.'s medical records, "UDS positive for
3 methamphetamines: hx ADHD on Vyvanse".

4 1637. Plaintiff Mrs. Smith was not ever told by any party that her legal prescription
5 medication for ADHD, Vyvanse, which contains lisdexamfetamine, was being monitored
6 as inherent substance abuse, nor what was considered 'appropriate' versus
7 'inappropriate' behavior.

8 1638. There is not any valid reason to place a mother's medical status in her newborn
9 child's medical records.

10 1639. A likely reason to place medical status information about a newborn child's
11 mother in that child's medical records was to attempt to color Plaintiff Mrs. Smith as a
12 potentially illegal methamphetamine user and by extension her newborn baby suffered
13 the deleterious effects of methamphetamine use.

14 1640. The statement in Plaintiff Newborn baby J.A.S.'s medical records as represented
15 by Defendant Mr. Gilberto I. Santiago, MD, that "UDS positive for methamphetamines:
16 hx ADHD on Vyvanse," harmed the reputation of Plaintiffs Mr. Smith and Newborn baby
17 J.A.S. in the estimation of the community by implying that Plaintiff Mrs. Smith ingested
18 illegal methamphetamines and that she and her son Plaintiff Newborn child J.A.S.
19 suffered from the deleterious effects of illegal and harmful substances.

20 1641. The defamatory statement is harmful in character because it implies that
21 Defendant Mrs. Smith has abused the illegal and harmful substance of
22 methamphetamine and that she passed the deleterious harm onto her son Plaintiff
23 Newborn baby J.A.S.

1 1642. Defendant Mr. Gilberto I. Santiago, MD, published the defamatory statement in
2 Plaintiff Newborn baby J.A.S.'s medical records as an addendum where the statements
3 were read by every medical provider who thereafter consulted Plaintiff Newborn baby
4 J.A.S.'s medical records for an update on his status or history, as well as, other state
5 parties when they became involved in investigating the Smith Family.

6 1643. Upon information and belief, it can be demonstrated through Defendant
7 testimonies, examinations of medical records, and hospital policies, such as, in-person,
8 around the clock surveillance of a breastfeeding mother by male hospital security
9 officers, that recipients of the publication understood that the meaning of the publication
10 was that Plaintiff Mrs. Smith had ingested illegal methamphetamine.

11 1644. Since the defamatory statement is contained within Plaintiff Newborn baby
12 J.A.S.'s medical records, and because Plaintiff Mrs. Smith is the mother of Plaintiff
13 Newborn baby J.A.S. it was clear that the defamatory statement was to be applied to
14 both Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

15 1645. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
16 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
17 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to
18 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
19 each other's invalid moral positions leading other staff to regard their inappropriate
20 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
21 considered abused by his mother through her use of illegal drugs, by Defendants St.
22 Luke's Hospital and Onsite Neonatal through their agents, employees, or assigns,
23 Defendants Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO.

1 1646. Upon information and belief, Defendants St. Luke's Hospital and Onsite
2 Neonatal, through their agents, employees, or assigns, Defendants Mr. Gilberto I.
3 Santiago, MD, and, Ms. Chaminie Wheeler, DO, abused their conditionally privileged
4 occasion when as medical providers with the ability to alter and manipulate medical
5 records, they did write true statements in those records, including partially in the
6 published defamatory statement.

7 1647. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
8 public figures.

9 1648. Since this is a case of a private figure plaintiff redressing issues of private
10 concern, the appropriate standard for this libel claim is one of negligence.

11 1649. Negligence: (1) Medical providers with the ability to alter medical records are
12 required to maintain medical records that reflect the truth of a matter in both itemized
13 mentions of fact and the totality of what those facts are to represent.

14 1650. Negligence: (2) Defendants medical providers Mr. Gilberto I. Santiago, MD, and,
15 Ms. Chaminie Wheeler, DO did maintain true and accurate medical records when
16 itemized mentions of fact were read in isolation from one another; however, when taken
17 as a totality the facts, present the Plaintiffs in a harmful and dishonest light, culminating
18 with when Defendants Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO
19 represented in Plaintiff Newborn baby J.A.S.'s medical records that Plaintiff Mrs. Smith
20 had ingested an illegal and controlled substance.

21 1651. Negligence: (3) Upon information and belief, but for the actions of the Defendants
22 implying that Plaintiff Mrs. Smith had ingested methamphetamine, Plaintiff Mrs. Smith
23 would not have suffered the aforementioned harms and indignities mentioned earlier in

1 this allegation of libelous defamation, as well, it is likely that Plaintiff Mrs. Smith would
2 not have had pervasive and injurious inquiries about private family matters by state
3 officials.

4 1652. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
5 Defendant's conduct, including but not limited to, emotional and psychological distress,
6 pain and suffering, and injury to their reputations.

7 1653. Libel by Implication occurs when "true facts that in context imply a falsehood."⁹⁴

8 1654. In addition, "the literal accuracy of separate statements will not render a
9 communication 'true' where, as here, the implication of the communication as a whole
10 was false."⁹⁵

11 1655. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
12 demonstrate by a preponderance of the evidence that any one statement in Plaintiff
13 Newborn baby J.A.S.'s medical records may be true, but the implication of the
14 communications as a whole in Plaintiff Newborn baby J.A.S.'s medical records is false.

15 1656. As well, if "the defendant juxtaposes [a] series of fact so as to imply a defamatory
16 connection between them, or [otherwise] creates a defamatory implication..." then a
17 libelous statement by implication is present.⁹⁶

⁹⁴*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

⁹⁵*Id.* at 493.

⁹⁶*Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 1657. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
2 demonstrate by a preponderance of the evidence that many facts contained within
3 Plaintiff Newborn baby J.A.S.'s medical records juxtapose a series of facts so as to
4 imply a defamatory connection of methamphetamine ingestion by Plaintiff Mrs. Smith,
5 the deleterious effects of which were passed on to Plaintiff Newborn baby J.A.S.

6 1658. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
7 evidence that the Defendants St. Luke's Hospital and/or Onsite Neonatal supervised Mr.
8 Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO, in connection with this
9 allegation and are therefore liable under a legal theory of respondeat superior.

10 1659. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
11 supervised Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO's conduct
12 violated Plaintiffs' rights under Pennsylvania Statute *42 Pa. C.S. § 8343* for defamation.

13 **Damages for Libel IV(a-c)**

14 1660. Plaintiff Mr. Smith suffered substantial harm as a result of Defendants' conduct,
15 including but not limited to, emotional and psychological distress, pain and suffering,
16 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
17 compensatory damages to account for PTSD therapies and other related treatments as
18 they have been and will continue to be necessary; Plaintiff respectfully requests an
19 amount of \$595,000 in compensatory damages per Defendant.

20 1661. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
21 Neonatal, Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO, and therefore,
22 their ability to afford the appropriate training to avoid this egregious violation of the
23 Pennsylvania Statutory Law, and, since harm was actually caused to the current Plaintiff

Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, Mr. Gilberto I. Santiago, MD, and, Ms. Chaminie Wheeler, DO to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Statutory Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendant Mr. Gilberto I. Santiago, MD; \$5,000,000 per Defendant Ms. Chaminie Wheeler, DO; and \$10,000,000 per Defendants St. Luke's Hospital, and Onsite Neonatal.

1662. In the unlikely event that the jury does not find that Plaintiff Mr. Smith suffered any actual injury despite the deprivation of their statutory law rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

XXVI. § 42 Pa. C. S. § 8343, Defamation - Libel V

Mr. Michael O. Smith v. St. Luke's Hospital, OBHG PA, & Ms. Teresa Marlino, MD

1663. Under Pennsylvania defamation law, a communication will be considered defamatory if it “tends so to harm the reputation of [the complaining party] as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.”⁹⁷

⁹⁷*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

1664. In order for Plaintiffs to succeed in their claim, they must prove the following elements⁹⁸.

- (1) The defamatory character of the communication;
- (2) Its publication by the defendant;
- (3) Its application to the plaintiff;
- (4) The understanding by the recipient of its defamatory meaning;
- (5) The understanding by the recipient of it as intended to be applied to the plaintiff;
- (6) Special harm resulting to the plaintiff from its publication; and
- (7) Abuse of a conditionally privileged occasion.

1665. The Pennsylvania Supreme Court has abolished an “actual malice” standard and has shifted the inquiry to whether a plaintiff is a private individual or a public figure or public official.⁹⁹

1666. Pennsylvania has adopted a negligence standard for private figure plaintiff lawsuits regarding issues of private concern.¹⁰⁰

1667. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection

⁹⁸42 Pa.C.S. § 8343(a)(1-7).

⁹⁹*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the defendant can lead to wider array of potential damages.

¹⁰⁰*Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

1 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
2 the interests of another.¹⁰¹

3 **The Context**

4 1668. Defendants St. Luke's Hospital, and OBHG PA among other parties named and
5 unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
6 Family, including Plaintiff Mr. Smith.

7 1669. Defendant Ms. Teresa Marlino, MD, supported the hostile atmosphere
8 intentionally created by Defendant St. Luke's Hospital, and OBHG PA.

9 1670. Defendants St. Luke's Hospital and OBHG PA coordinated their employee,
10 agent, or assign, Defendant Ms. Teresa Marlino, MD, towards a narrative that Mrs.
11 Smith had ingested methamphetamine and that Mrs. Smith gave birth to Newborn baby
12 J.A.S. who suffered the deleterious effects of methamphetamine.

13 1671. The umbilical cord that connected Newborn baby J.A.S. and Mrs. Smith was
14 tested on April 9th, 2021, and was negative for amphetamines and methamphetamines.

15 1672. Despite the umbilical cord that connected Plaintiffs Newborn baby J.A.S. and
16 Mrs. Smith testing negative for illegal drugs, Defendants St. Luke's Hospital, and OBHG
17 PA, acting through agent, employee, or assign Defendant Ms. Teresa Marlino, MD,
18 continued the narrative that Plaintiff Mrs. Smith had ingested methamphetamine and

¹⁰¹ See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 that Mrs. Smith gave birth to Newborn baby J.A.S. who also suffered the deleterious
2 effects of methamphetamine.

3 1673. Medical records on April 9th, 2021, reflect the statement, “[F]amily was requesting
4 discharge at 12 hours of life.”

5 1674. Mr. and Mrs. Smith requested at approximately 12-hours of Newborn baby
6 J.A.S.’s life that the Smith Family be discharged from Defendant St. Luke’s Hospital
7 when practicable, not immediately at 12 hours from birth, as is suggested in the medical
8 records entered by St. Luke’s Hospital agents, employees, and/or assigns.

9 1675. Defendant St. Luke’s Hospital, and OBHG PA, through their agents, employees,
10 or assigns, was further attempting to imply that Mrs. Smith was urgently seeking to go
11 home so that she could consume methamphetamine by making the medical records
12 appear that Mrs. Smith sought to reingest methamphetamine by going home as soon as
13 possible after her newborn baby’s birth.

14 1676. Beginning on April 10th, 2021 the statement, “High probability of life[-]threatening
15 clinical deterioration in infant’s condition without treatment,” began regularly appearing
16 in medical records.

17 1677. Mr. and Mrs. Smith were not ever told by any agent, employee, or assign of
18 Defendants St. Luke’s Hospital, and OBHG PA, that Newborn baby J.A.S. had a, “High
19 probability of life[-]threatening clinical deterioration...without treatment.”

20 1678. Despite the accusation of methamphetamine use by Defendants St. Luke’s
21 Hospital, and OBHG PA, and their agents, assigns, or employees, Mrs. Smith was
22 allowed to breastfeed Newborn baby J.A.S.

1 1679. Despite Mrs. Smith and newborn baby J.A.S. being suspected of suffering the
2 deleterious effects of methamphetamine, state mandated policies and procedures for
3 methamphetamine withdrawal were not implemented for Newborn baby J.A.S. by
4 Defendants St. Luke's Hospital, and OBHG PA, nor any other health provider.

5 1680. Notes on medical records by non-radiology experts from April 11th, 2021, stated
6 that, "...upon admission to the NICU [newborn baby J.A.S.] showed hazy lung fields
7 with expansion to 5-9 ribs."

8 1681. Radiology indicates in the medical record no "hazy lung fields" or "expansion"
9 into Newborn baby J.A.S.'s lungs.

10 1682. Radiology, instead indicates in the medical record, "Perhaps minimal asymmetric
11 granular opacity on the right. No consolidation. No discernable pneumothorax or
12 layering pleural effusion on limited supine imaging. Osseous structures appear within
13 normal limits for patient age."

14 1683. Upon information and belief, Defendants St. Luke's Hospital, and OBHG PA, and
15 other parties named and unnamed in this lawsuit, manipulated the medical records in
16 their own interpretations of the radiologist's report to paint Newborn baby J.A.S. and
17 Mrs. Smith as suffering the deleterious effects of methamphetamine use to construct a
18 reason to keep Newborn baby J.A.S. in the hospital against the will and consent of his
19 parents.

20 1684. As represented in the medical documentation, beginning on April 10th, 2021, Mrs.
21 Smith was under constant monitoring by all Defendant St. Luke's Hospital and OBHG
22 PA for "inappropriate behavior" via their agents, employees, and/or assigns.

1 1685. As of April 9th, 2021, Plaintiff Mr. Smith was not allowed to ever be on St. Luke's
2 Hospital's property at the consequence of being arrested.

3 1686. As of April 10th, 2021, Mrs. Smith was supervised around the clock by male
4 security guards, even while breastfeeding, and walking to the restroom.

5 1687. On the evening of April 9th, 2021, after Mr. & Mrs. Smith were ejected from St.
6 Luke's Hospital's property., Defendant Ms. Teresa Marlino, MD, created an addendum
7 to Mrs. Smith's medical records.

8 1688. The addendum written by Defendant Ms. Teresa Marlino, MD is as follows:

9 "I performed a history and physical examination of the
10 patient and discussed her management with the resident. I
11 reviewed the note and agree with the documented findings
12 and plan of care.

13 Patient has been in the NICU most of the day and I was able
14 to see her this evening after my 4th attempt. She reports
15 feeling well. She was accompanied by her husband. They
16 recently moved from Upper Darby near 69th Street to Mount
17 Pocono because of a faulty heater contaminating their
18 rented home with diesel fuel. "The first 3 times it happened,
19 we cleaned it up ourselves. This last time, we were not
20 dealing with it. We are not bringing a newborn baby home to
21 that – we told the landlord – fuck it." I asked Grace about
22 her job and she reported she and her husband, Michael, are
23 attorneys who graduated from Widener Law School. She is

1 working remotely as an “E-data lawyer” and he is currently
2 home taking care of the children who are 7yo, 4yo and
3 1.5yo. “You can find me on care.com”. Michael reported
4 they chose Mount Pocono since it is 20 minutes away from
5 her family. They moved their family to Mount Pocono last
6 week.

7 I asked Grace if she was aware that her urine drug screen
8 was positive for marijuana and methamphetamine and she
9 reported that she has a medical marijuana card and takes
10 Vyvanse for Attention Deficit Disorder. I told them that
11 because her urine drug screen, as well as the baby’s urine
12 drug screen, were positive for THC and methamphetamine,
13 the hospital social worker has contacted the Monroe County
14 Children and Youth Services. I explained that we are
15 required by Pennsylvania state law to report this case.

16 Michael then became agitated, very angry and was using
17 obscenities with me. He wanted to know why we did not
18 investigate and request her medical records to confirm that
19 she was prescribed both of these medications legally. I
20 explained that our responsibility as healthcare workers was
21 to report the case to CYS and they would conduct any
22 investigation that was necessary. We had not cared for
23 patient during her pregnancy (care received at Crozer -

1 Chester Hospital in Chester, Delaware County, PA); she
2 arrived to our hospital in labor yesterday. He then became
3 increasingly agitated and yelled "No one is going to violate
4 my 4th amendment rights; no one will violate my 4th
5 amendment rights! No one will set foot on my property. We
6 are taking our baby from the NICU and leaving here. None
7 of our other children needed to be in the NICU or had trouble
8 breathing so he won't either." He then went on to say "no
9 other doctors in the past 10 years did not believe us when
10 we said she was on prescription drugs. They did not report
11 us to CYS – so why have you?" Nurse Lisa Ferro had
12 entered the room just as I was explaining the report to
13 Monroe County CYS. Michael then said, "Get out of our
14 room! We don't want to speak with you anymore".
15 I left the room and immediately called Dr. Schultz in the
16 NICU to make her aware that Michael and Grace were
17 planning to leave the hospital this evening and were coming
18 to get the baby.
19 Grace is medically stable for discharge this evening. I met
20 her at the front desk and verbally reviewed her discharge
21 instructions. Nurse Lisa Ferro gave her discharge papers.
22 The patient and her husband Michael were then escorted by
23 local police officers and security to the hospital entrance."

1 1689. Upon information and belief, Defendant Ms. Teresa Marlino, MD participated in
2 and approved of a false narrative concerning Plaintiff Mr. Smith, that Plaintiff Mr. Smith
3 was in some way too dangerous or violent to be allowed to visit his son Newborn baby
4 J.A.S. on St. Luke's Hospital's property.

5 1690. Demonstration of instances in which the narrative of Defendant Ms. Teresa
6 Marlino, MD, substantially differs from that of Plaintiff Mr. Michael O. Smith are, but are
7 not limited to (1) Plaintiff Mr. Smith represented his profession as a K-12+ multi-subject
8 tutor, not an attorney; (2) neither Mr. nor Mrs. Smith told Defendant Ms. Marlino, MD,
9 how far Mr. and Mrs. Smith lived from Mrs. Smith's parents; (2) neither Mrs. Smith, nor
10 Newborn baby J.A.S. tested positive for methamphetamine; (3) Plaintiff Mr. Smith did
11 not direct any obscenities in the direction of Defendant Ms. Marlino, MD, nor did he
12 curse the situation at hand in front of her; (4) PA law did not require Defendant St.
13 Luke's Hospital to contact Children and Youth Services; and, (5) Plaintiff Mr. Smith did
14 not ever "become increasingly agitated" to a degree that he raised his voice to a decibel
15 level commonly perceived as yelling.

16 1691. In addition to what Defendant Ms. Teresa Marlino, MD asserts as fact in her
17 attestation she leaves out mention that she was kindly requested to leave the Plaintiffs'
18 hospital room four times before she relented.

19 1692. In addition to what Defendant Ms. Teresa Marlino, MD asserts as fact in her
20 attestation she leaves out mention that Mrs. Smith was the parent who withdrew
21 consent for Newborn baby J.A.S. to be treated at St. Luke's Hospital, not Plaintiff Mr.
22 Smith who merely assented to Mrs. Smith's wishes for consent to be withdrawn.

1 1693. In addition to what Defendant Ms. Teresa Marlino, MD asserts as fact in her
2 attestation she leaves out mention that she was made aware that the social worker for
3 Defendant St. Luke's Hospital met with Plaintiff Mr. Smith in Mrs. Smith's postpartum
4 hospital room, whereupon the hospital social worker neither mentioned that Monroe
5 County Children and Youth Services had been contacted about the Smith Family, nor
6 did she seem at all concerned about informing Plaintiff Mr. Smith that Children and
7 Youth Services would be contacted because of concerns with the Smith Family.

8 1694. Upon information and belief, in addition to what Defendant Ms. Teresa Marlino,
9 MD, asserts as fact in her attestation she leaves out mention that she entered Mrs.
10 Smith's postpartum hospital room with a preconceived bias that Mrs. Smith was
11 suffering the deleterious effects of methamphetamine ingestion, despite never meeting,
12 or physically examining Mrs. Smith.

13 **The Libelous Statement**

14 1695. Upon information and belief, Defendant Ms. Teresa Marlino, MD supported the
15 hostile atmosphere intentionally created by St. Luke's Hospital, and/or OBHG PA
16 against the Plaintiff Smith Family.

17 1696. Defendant Ms. Teresa Marlino, MD, on April 9th, 2021, placed an addendum in
18 Mrs. Smith's medical records including the libelous statement represented by Defendant
19 Ms. Teresa Marlino, MD, "Michael then became agitated, very angry and was using
20 obscenities with me."

21 1697. Plaintiff Mr. Smith did not ever act in a "very angry" manner, nor was he ever
22 "using obscenities" with respect towards Defendant Ms. Teresa Marlino, MD.

1 1698. Upon information and belief, Defendant Ms. Teresa Marlino, MD, supported the
2 false narrative created about Plaintiff Mr. Smith that Plaintiff Mr. Smith acted in a “very
3 angry” manner and that Plaintiff Mr. Smith used “obscenities” directed at those for whom
4 Plaintiff Mr. Smith found dissatisfaction.

5 1699. Upon information and belief, there is not a valid reason to place a father’s
6 emotional status in his patient wife’s medical records.

7 1700. Upon information and belief, there is not any valid reason to place misleading
8 information in Plaintiff Mr. Smith’s wife’s medical records leading to the logical
9 conclusion that Plaintiff Mr. Smith is the type of person that cannot appropriately control
10 his anger.

11 1701. A likely reason to place misleading personal information about a husband in his
12 wife’s medical records is to attempt to color Plaintiff Mr. Smith as a potentially violent
13 person.

14 *Libel Per Se V(a)*

15 1702. The statement in Mrs. Smith’s medical records as represented by Defendant Ms.
16 Teresa Marlino, MD, that “Michael then became agitated, very angry and was using
17 obscenities with me,” harmed the reputation of Plaintiff Mr. Smith in the estimation of the
18 community by stating that Plaintiff Mr. Smith is an individual of violent character, and
19 that he acted in a manner befitting a no trespassing order from the Bethlehem Police
20 Department.

21 1703. The defamatory statement is harmful in character because it states that Plaintiff
22 Mr. Smith is a person who engaged in instances of such verbal violence that he could

1 not be permitted on Defendant St. Luke's Hospital property to visit with his newborn
2 baby child in the N.I.C.U. nor to physically or emotionally support his postpartum wife.
3 1704. Defendant Ms. Teresa Marlino, MD, published the defamatory statement in Mrs.
4 Smith's medical records where the statements were read by every medical provider who
5 thereafter consulted Mrs. Smith's medical records for an update on her status or history,
6 as well as, other state parties when they became involved in investigating the Smith
7 Family.

8 1705. Upon information and belief, it can be demonstrated through Defendant
9 testimonies, examinations of medical records, and hospital policies, such as, in-person,
10 around the clock surveillance of a newborn baby child by male hospital security officers,
11 that recipients of the publication understood that the meaning of the publication was that
12 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke's
13 Hospital to recover his child.

14 1706. Since the defamatory statement is contained within Mrs. Smith's medical records,
15 and because Plaintiff Mr. Smith is the husband of Mrs. Smith it was clear that the
16 defamatory statement was to be applied to Plaintiff Mr. Smith.

17 1707. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
18 exacerbating Plaintiff's mental health condition, causing a postpartum father to
19 needlessly suffer without his newborn baby child who was in neonatal intensive care,
20 staff ratifying each other's invalid moral positions leading other staff to regard their
21 inappropriate actions with a sense of false righteousness, and a baseless reputation for
22 violent behavior, by Defendants St. Luke's Hospital, and OBHG PA through their agent,
23 employee, or assign, Defendant Ms. Teresa Marlino, MD.

1 1708. Upon information and belief, Defendants St. Luke's Hospital, and OBHG PA,
2 through their agent, employee, or assign, Defendant Ms. Teresa Marlino, MD, abused
3 her conditionally privileged occasion when as a medical provider with the ability to alter
4 and manipulate medical records, did represent and publish statements that Plaintiff Mr.
5 Smith acted in a manner requiring a no trespass order.

6 1709. Plaintiff Mr. Smith is a private individual and not a public figure.

7 1710. Since this is a case of a private figure plaintiff redressing issues of private
8 concern, the appropriate standard for this libel claim is one of negligence.

9 1711. Negligence: (1) Medical providers with the ability to alter medical records are
10 required to maintain records that do not place legal representations in those records
11 that reflect the legal status of someone other than the record holder themselves.

12 1712. Negligence: (2) Medical provider Defendant Ms. Teresa Marlino, MD cast
13 unnecessary and harmful aspersions in medical records when Defendant Ms. Marlino,
14 MD represented in Mrs. Smith's medical records that Plaintiff Mr. Smith, "Michael then
15 became agitated, very angry and was using obscenities with me," which was a harmful
16 and misleading representation in Mrs. Smith's medical records about the character of
17 Plaintiff Mr. Smith.

18 1713. Negligence: (3) Upon information and belief, but for the actions of the Defendant
19 attesting to Plaintiff Mr. Smith as an individual behaving in a manner befitting a no
20 trespass order, Plaintiff Mr. Smith would not have suffered the aforementioned harms
21 and indignities mentioned earlier in this allegation of libelous defamation, as well, it is
22 possible that Plaintiff Mr. Smith would not have had pervasive and injurious inquiries
23 about private family matters by state officials.

1 1714. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
2 conduct, including but not limited to, emotional and psychological distress, pain and
3 suffering, and injury to his reputation.

4 1715. In *libel per se* cases Pennsylvania defamation law considers "Words that on their
5 face and without the aid of extrinsic evidence are recognized as injurious are actionable
6 per se...."¹⁰²

7 1716. Upon information and belief, Defendants' directly and unequivocally accused
8 Plaintiff Mr. Smith of being an individual violent enough that a no trespass order was
9 appropriate for his character, so much so, that such information should appear in his
10 wife's medical records, are on their face and without the aid of extrinsic evidence
11 injurious, and actionable for a *libel per se* claim.

12 1717. In *libel pe se* cases, Pennsylvania law observes that, "words imputing a criminal
13 offense, loathsome disease, business misconduct or serious sexual misconduct" will be
14 considered defamatory per se.¹⁰³

15 1718. Since Defendants' directly and unequivocally accused Plaintiff Mr. Smith of
16 having the characteristics of a violent individual, and thereby a criminal, in his wife's
17 medical records, and since acts of violence are those acts which violate the law, the
18 Defendants' imputed a criminal offense, thereby making this an actionable *libel per se*
19 claim.

¹⁰²*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

¹⁰³*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 1719. Upon information and belief, Plaintiff can demonstrate by a preponderance of
2 evidence that the Defendants St. Luke's Hospital, and OBHG PA, supervised Ms.
3 Teresa Marlino, MD, in connection with this allegation and is therefore liable under a
4 legal theory of respondeat superior.

5 1720. Upon information and belief, Defendants St. Luke's Hospital, OBHG PA,
6 supervised Ms. Teresa Marlino's conduct violated Plaintiffs' rights under Pennsylvania
7 Statute 42 Pa. C.S. § 8343 for defamation.

8 *Or, In the Alternative,*

9 *Libel Per Quod V(b)*

10 1721. The statement in Mrs. Smith's medical records as represented by Defendant Ms.
11 Teresa Marlino, MD, that "Michael then became agitated, very angry and was using
12 obscenities with me," harmed the reputation of Plaintiff Mr. Smith in the estimation of the
13 community by stating that Plaintiff Mr. Smith is an individual of violent character, and
14 that he acted in a manner befitting a no trespassing order from the Bethlehem Police
15 Department.

16 1722. The defamatory statement is harmful in character because it states that Plaintiff
17 Mr. Smith, at the behest of Defendants St. Luke's Hospital, and OBHG PA, is a person
18 capable of such violence that he cannot be permitted on Defendant St. Luke's Hospital's
19 property to visit with his newborn baby child in the N.I.C.U.

20 1723. Defendant Ms. Teresa Marlino, MD, published the defamatory statement in Mrs.
21 Smith's medical records where the statements were read by every medical provider who
22 thereafter consulted Mrs. Smith's medical records for an update on her status or history,

1 as well as, other state parties when they became involved in investigating the Smith
2 Family.

3 1724. Upon information and belief, it can be demonstrated through Defendant
4 testimonies, examinations of medical records, and hospital policies, such as, in-person,
5 around the clock surveillance of a newborn baby by male hospital security officers, that
6 recipients of the publication understood that the meaning of the publication was that
7 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke's
8 Hospital to recover his child.

9 1725. Since the defamatory statement is contained within Mrs. Smith's medical records,
10 and because Plaintiff Mr. Smith is the husband of Mrs. Smith it was clear that the
11 defamatory statement was to be applied to Plaintiff Mr. Smith.

12 1726. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
13 exacerbating Plaintiff's mental health condition, causing a postpartum father to
14 needlessly suffer without his newborn baby child who was in neonatal intensive care,
15 staff ratifying each other's invalid moral positions leading other staff to regard their
16 inappropriate actions with a sense of false righteousness, and a baseless reputation for
17 violent behavior, by Defendants St. Luke's Hospital, and OBHG PA through their agent,
18 employee, or assign, Defendant Ms. Teresa Marlino, MD.

19 1727. Upon information and belief, Defendants St. Luke's Hospital, and OBHG PA,
20 through their agent, employee, or assign, Defendant Ms. Teresa Marlino, MD, abused
21 her conditionally privileged occasion when as a medical provider with the ability to alter
22 and manipulate medical records, did represent and publish statements that Plaintiff Mr.
23 Smith acted with behavior requiring a no trespass order.

1 1728. Plaintiff Mr. Smith is a private individual and not a public figure.

2 1729. Since this is a case of a private figure plaintiff redressing issues of private
3 concern, the appropriate standard for this libel claim is one of negligence.

4 1730. Negligence: (1) Medical providers with the ability to alter medical records are
5 required to maintain records that do not place legal representations in those records
6 that reflect the legal status of someone other than the record holder themselves.

7 1731. Negligence: (2) Medical provider Defendant Ms. Teresa Marlino, MD, cast
8 unnecessary and harmful aspersions in medical records when Defendant Ms. Teresa
9 Marlino, MD, represented in Mrs. Smith's medical records that Plaintiff Mr. Smith,
10 "Michael then became agitated, very angry and was using obscenities with me," which
11 was a harmful and misleading representation in Mrs. Smith's medical records about the
12 character of Plaintiff Mr. Smith.

13 1732. Negligence: (3) Upon information and belief, but for the actions of the Defendant
14 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
15 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
16 earlier in this allegation of libelous defamation, as well, it is possible that Plaintiff Mr.
17 Smith would not have had pervasive and injurious inquiries about private family matters
18 by state officials.

19 1733. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
20 conduct, including but not limited to, emotional and psychological distress, pain and
21 suffering, and injury to his reputation.

1 1734. In *libel per quod* cases Pennsylvania defamation law considers extrinsic
2 supporting evidence of libelous behavior if the injurious nature of the words is not
3 apparent.¹⁰⁴

4 1735. Upon information and belief, Plaintiff can demonstrate by a preponderance of
5 evidence that through the presentation of medical records, informational reports, and
6 other administrative documentation that the libelous statement was not a mere
7 description of the father for the medical edification of potential diagnosis concerning
8 Mrs. Smith, but was instead a statement intended to cast unfounded and harmful
9 aspersions on Plaintiff Mr. Smith.

10 1736. Plaintiff will need to demonstrate necessary innuendo by Defendant Parties.

11 1737. “Innuendo”, “define[s] the defamatory meaning which the plaintiff attaches to the
12 words” and “show[s] how they come to have that meaning and how they relate to the
13 plaintiff.”¹⁰⁵

14 1738. A ‘no trespass’ order is not supposed to be contrived without meaning and
15 therefore carries with it the implied weight of violence if such a person were to trespass.

16 1739. When Defendant Ms. Teresa Marlino, MD wrote the libelous statement with the
17 weight of the authority of her position it was to make clear to other medical
18 professionals, administrators, and/or county personnel that Plaintiff Mr. Smith is a
19 person of violent nature who cannot be around his newborn baby or hospital personnel.

¹⁰⁴*Joseph*, 959 A.2d at n.23.

¹⁰⁵*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962)

(citations omitted).

1 1740. The libelous statement relates to Plaintiff Mr. Smith because the statement is
2 about the father of the newborn child, Plaintiff Mr. Smith, and the libelous statement is
3 contained in the mother of the child's medical records.

4 1741. Upon information and belief, Plaintiff can demonstrate by a preponderance of
5 evidence that the Defendants St. Luke's Hospital, and OBHG PA supervised Ms.
6 Teresa Marlino, MD, in connection with this allegation and are therefore liable under a
7 legal theory of respondeat superior.

8 1742. Upon information and belief, Defendants St. Luke's Hospital, OBHG PA,
9 supervised Ms. Teresa Marlino's conduct violated Plaintiffs' rights under Pennsylvania
10 Statute 42 Pa. C.S. § 8343 for defamation.

11 *Or, In the Alternative*

12 *Libel by Implication V(c)*

13 1743. The statement in Mrs. Smith's medical records as represented by Defendant Ms.
14 Teresa Marlino, MD, that "Michael then became agitated, very angry and was using
15 obscenities with me," harmed the reputation of Plaintiff Mr. Smith in the estimation of the
16 community by stating that Plaintiff Mr. Smith is an individual of violent character, and
17 that acted in a manner befitting a no trespassing order from the Bethlehem Police
18 Department.

19 1744. The defamatory statement is harmful in character because it states that Plaintiff
20 Mr. Smith, at the behest of Defendants St. Luke's Hospital, and OBHG PA, is a person
21 capable of such violence that he cannot be permitted on Defendant St. Luke's Hospital's
22 property to visit with his newborn baby in the N.I.C.U.

1 1745. Defendant Ms. Teresa Marlino, MD, published the defamatory statement in Mrs.
2 Smith's medical records where the statements were read by every medical provider who
3 thereafter consulted Mrs. Smith's medical records for an update on her status, as well
4 as, other state parties when they became involved in investigating the Smith Family.

5 1746. Upon information and belief, it can be demonstrated through Defendant
6 testimonies, examinations of medical records, and hospital policies, such as, in-person,
7 around the clock surveillance of a newborn baby by male hospital security officers, that
8 recipients of the publication understood that the meaning of the publication was that
9 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke's
10 Hospital to recover his child.

11 1747. Since the defamatory statement is contained within Mrs. Smith's medical records,
12 and because Plaintiff Mr. Smith is the husband of Mrs. Smith it was clear that the
13 defamatory statement was to be applied to Plaintiff Mr. Smith.

14 1748. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
15 exacerbating Plaintiff's mental health condition, causing a postpartum father to
16 needlessly suffer without his newborn baby who was in neonatal intensive care, staff
17 ratifying each other's invalid moral positions leading other staff to regard their
18 inappropriate actions with a sense of false righteousness, and a baseless reputation for
19 violent behavior, by Defendants St. Luke's Hospital, and OBHG PA through their agent,
20 employee, or assign, Defendant Ms. Teresa Marlino, MD.

21 1749. Upon information and belief, St. Luke's Hospital, and OBHG PA, through their
22 agent, employee, or assign, Defendant Ms. Teresa Marlino, MD, abused her
23 conditionally privileged occasion when as a medical provider with the ability to alter and

1 manipulate medical records, did represent and publish statements that Plaintiff Mr.
2 Smith acted with behavior befitting a no trespass order.

3 1750. Plaintiff Mr. Smith is a private individual and not a public figure.

4 1751. Since this is a case of a private figure plaintiff redressing issues of private
5 concern, the appropriate standard for this libel claim is one of negligence.

6 1752. Negligence: (1) Medical providers with the ability to alter medical records are
7 required to maintain records that do not place legal representations in those records
8 that reflect the legal status of someone other than the record holder themselves.

9 1753. Negligence: (2) Medical provider Defendant Ms. Teresa Marlino, MD cast
10 unnecessary and harmful aspersions in medical records when Defendant Ms. Teresa
11 Marlino, MD represented in Mrs. Smith's medical records that Plaintiff Mr. Smith,
12 "Michael then became agitated, very angry and was using obscenities with me," which
13 was a harmful and misleading representation in Mrs. Smith's medical records about the
14 character of Plaintiff Mr. Smith.

15 1754. Negligence: (3) Upon information and belief, but for the actions of the Defendant
16 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
17 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
18 earlier in this allegation of libelous defamation, as well, it is possible that Plaintiff Mr.
19 Smith would not have had pervasive and injurious inquiries about private family matters
20 by state officials.

21 1755. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
22 conduct, including but not limited to, emotional and psychological distress, pain and
23 suffering, and injury to his reputation.

1 1756. In *libel per quod* cases Pennsylvania defamation law considers extrinsic
2 supporting evidence of libelous behavior if the injurious nature of the words is not
3 apparent.¹⁰⁶

4 1757. Upon information and belief, Plaintiff can demonstrate by a preponderance of
5 evidence that through the presentation of medical records, informational reports, and
6 other administrative documentation that the libelous statement was not a mere
7 description of the father for the medical edification of potential diagnosis concerning
8 Mrs. Smith, but was instead a statement intended to cast unfounded and harmful
9 aspersions on Plaintiff Mr. Smith.

10 1758. Libel by Implication occurs when “true facts that in context imply a falsehood.”¹⁰⁷

11 1759. In addition, “the literal accuracy of separate statements will not render a
12 communication ‘true’ where, as here, the implication of the communication as a whole
13 was false.”¹⁰⁸

14 1760. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
15 preponderance of the evidence that any one statement in Mrs. Smith’s medical records
16 may be true, but the implication of the communications as a whole in Mrs. Smith’s
17 medical records is false.

¹⁰⁶Joseph, 959 A.2d at n.23.

¹⁰⁷*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

¹⁰⁸*Id.* at 493.

1 1761. As well, if “the defendant juxtaposes [a] series of fact so as to imply a defamatory
2 connection between them, or [otherwise] creates a defamatory implication...” then a
3 libelous statement by implication is present.¹⁰⁹

4 1762. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
5 preponderance of the evidence that many facts contained within Mrs. Smith’s medical
6 records juxtaposes a series of facts so as to imply a defamatory connection of violent
7 predilections by Plaintiff Mr. Smith.

8 1763. Although it may be literally true that, “Michael then became agitated, very angry
9 and was using obscenities with me,” a likely reason to make that statement in Mrs.
10 Smith’s medical records was to imply the falsehood that Plaintiff Mr. Smith is of violent
11 nature.

12 1764. If Plaintiff Mr. Smith was “agitated” it was in reasonable proportion to the fact that
13 his wife was being accused of methamphetamine ingestion and that it was implied that
14 his son Newborn baby J.A.S. was suffering the deleterious effects of methamphetamine
15 ingestion by Plaintiff Mr. Smith’s wife Mrs. Smith; however, Plaintiff Mr. Smith’s anger
16 never exceeded the bounds of reasonable civil discourse.

17 1765. If Plaintiff Mr. Smith was “very angry” it was in reasonable proportion to the fact
18 that his wife was being accused of methamphetamine ingestion and that it was implied
19 that his son Newborn baby J.A.S. was suffering the deleterious effects of
20 methamphetamine ingestion by Plaintiff Mr. Smith’s wife Mrs. Smith; however, Plaintiff
21 Mr. Smith’s anger never exceeded the bounds of reasonable civil discourse.

¹⁰⁹*Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 1766. If Plaintiff Mr. Smith was “using obscenities” it was in reasonable proportion to
2 the fact that his wife was being accused of methamphetamine ingestion and that it was
3 implied that his son Newborn baby J.A.S. was suffering the deleterious effects of
4 methamphetamine ingestion by Plaintiff Mr. Smith’s wife Mrs. Smith; however, Plaintiff
5 Mr. Smith’s obscenities never exceeded the bounds of reasonable civil discourse, did
6 not contain what a reasonable person would call “curse words”, nor did any verbal
7 espousals by Plaintiff Mr. Smith appeal to a prurient interest.

8 1767. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
9 preponderance of evidence that the Defendants St. Luke’s Hospital, and OBHG PA
10 supervised Defendant Ms. Teresa Marlino, MD, in connection with this allegation and
11 are therefore liable under a legal theory of respondeat superior.

12 1768. Upon information and belief, Defendants St. Luke’s Hospital, OBHG PA,
13 supervised Ms. Teresa Marlino’s conduct violated Plaintiffs’ rights under Pennsylvania
14 Statute 42 Pa. C.S. § 8343 for defamation.

15 **Damages for Libel V(a-c)**

16 1769. Plaintiff Mr. Smith suffered substantial harm as a result of Defendants’ conduct,
17 including but not limited to, emotional and psychological distress, pain and suffering,
18 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
19 compensatory damages to account for PTSD therapies and other related treatments as
20 they have been and will continue to be necessary; Plaintiff respectfully requests an
21 amount of \$595,000 in compensatory damages per Defendant.

22 1770. Given the substantial wealth of the Defendants St. Luke’s Hospital, OBHG PA,
23 and Ms. Teresa Marlino, MD, and therefore, their ability to afford the appropriate training

1 to avoid this egregious violation of the Pennsylvania Statutory Law, and, since harm
2 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
3 continue to harm future postpartum families, and because the acts of the Defendants
4 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
5 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
6 punitive damages on Defendants St. Luke's Hospital, OBHG PA, and Ms. Teresa
7 Marlino, MD to deter such Defendants from committing to such conduct in the future
8 which violates Commonwealth of Pennsylvania Statutory Law Plaintiffs respectfully
9 request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's
10 Hospital, OBHG PA, and Ms. Teresa Marlino, MD.

11 1771. In the unlikely event that the jury does not find that Plaintiff Mr. Smith suffered
12 any actual injury despite the deprivation of their statutory law rights, the Plaintiff
13 respectfully requests a nominal judgment of \$1.00.

14 **XXVII. § 42 Pa. C. S. § 8343, Defamation - Libel VI**

15 **Mr. Michael O. Smith v. St. Luke's Hospital, Onsite Neonatal, & Ms. Cynthia Shultz,**

16 **MD**

17 1772. Under Pennsylvania defamation law, a communication will be considered
18 defamatory if it "tends so to harm the reputation of [the complaining party] as to lower

1 him in the estimation of the community or to deter third persons from associating or
2 dealing with him.”¹¹⁰

3 1773. In order for Plaintiffs to succeed in their claim, they must prove the following
4 elements¹¹¹.

5 (1) The defamatory character of the communication;

6 (2) Its publication by the defendant;

7 (3) Its application to the plaintiff;

8 (4) The understanding by the recipient of its defamatory meaning;

9 (5) The understanding by the recipient of it as intended to be applied to the plaintiff;

10 (6) Special harm resulting to the plaintiff from its publication; and

11 (7) Abuse of a conditionally privileged occasion.

12 1774. The Pennsylvania Supreme Court has abolished an “actual malice” standard and
13 has shifted the inquiry to whether a plaintiff is a private individual or a public figure or
14 public official.¹¹²

¹¹⁰*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

¹¹¹42 Pa.C.S. § 8343(a)(1-7).

¹¹²*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the defendant can lead to wider array of potential damages.

1 1775. Pennsylvania has adopted a negligence standard for private figure plaintiff
2 lawsuits regarding issues of private concern.¹¹³

3 1776. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
4 or obligation recognized by the law, requiring the actor to conform to a certain standard
5 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
6 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
7 the interests of another.¹¹⁴

8 **The Context**

9 1777. Defendants St. Luke's Hospital and Onsite Neonatal, among other parties named
10 and unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
11 Family, including Plaintiff Mr. Smith.

12 1778. Defendant Ms. Cynthia Shultz, MD, supported the hostile atmosphere
13 intentionally created by Defendants St. Luke's Hospital and Onsite Neonatal.

14 1779. Defendants St. Luke's Hospital and Onsite Neonatal coordinated their employee,
15 agent, or assign, Defendant Ms. Cynthia Shultz, MD, towards a narrative that Mrs.
16 Smith ingested methamphetamine and that Mrs. Smith gave birth to Newborn baby
17 J.A.S. who also suffered the deleterious effects of methamphetamine.

¹¹³*Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

¹¹⁴*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 1780. The umbilical cord that connected Newborn baby J.A.S. and Mrs. Smith was
2 tested on April 9th, 2021, and was negative for amphetamines and methamphetamines.

3 1781. Despite the umbilical cord that connected Newborn baby J.A.S. and Mrs. Smith
4 testing negative for illegal drugs, Defendants St. Luke's Hospital and Onsite Neonatal,
5 acting through agent, employee, or assign Defendant Ms. Cynthia Shultz, MD,
6 continued the narrative that Mrs. Smith had ingested methamphetamine and that Mrs.
7 Smith gave birth to Newborn baby J.A.S. who also suffered the deleterious effects of
8 methamphetamine.

9 1782. Medical records on April 9th, 2021, reflect the statement, "[F]amily was requesting
10 discharge at 12 hours of life."

11 1783. Mr. and Mrs. Smith requested at approximately 12-hours of Newborn baby
12 J.A.S.'s life that the Smith Family be discharged from Defendant St. Luke's Hospital
13 when practicable, not immediately at 12 hours from birth, as is suggested in the medical
14 records entered by Defendant St. Luke's Hospital agents, employees, and/or assigns.

15 1784. Defendant St. Luke's Hospital and Onsite Neonatal, through their agents,
16 employees, or assigns, was further attempting to imply that Plaintiff Mrs. Smith was
17 urgently seeking to go home so that she could consume methamphetamine by making
18 the medical records appear that Plaintiff Mrs. Smith sought to reingest
19 methamphetamine by going home as soon as possible after her newborn baby's birth.

20 1785. Beginning on April 10th, 2021 the statement, "High probability of life[-]threatening
21 clinical deterioration in infant's condition without treatment," began regularly appearing
22 in medical records.

1 1786. Mr. and Mrs. Smith were not ever told by any agent, employee, or assign of
2 Defendants St. Luke's Hospital or Onsite Neonatal that Newborn baby J.A.S. had a,
3 "High probability of life[-]threatening clinical deterioration...without treatment."

4 1787. Despite the accusation of methamphetamine use by Defendants St. Luke's
5 Hospital and Onsite Neonatal and their agents, assigns, or employees, Mrs. Smith was
6 allowed to breastfeed Newborn baby J.A.S.

7 1788. Despite Mrs. Smith and Newborn baby J.A.S. being suspected of suffering the
8 deleterious effects of methamphetamine, state mandated policies and procedures for
9 methamphetamine withdrawal were not implemented for Newborn baby J.A.S. by
10 Defendants St. Luke's Hospital, Onsite Neonatal, nor any other health provider.

11 1789. Notes on medical records by non-radiology experts from April 11th, 2021, stated
12 that, "...upon admission to the NICU [newborn baby J.A.S.] showed hazy lung fields
13 with expansion to 5-9 ribs."

14 1790. Radiology indicates in the medical record no "hazy lung fields" or "expansion"
15 into Newborn baby J.A.S.'s lungs.

16 1791. Radiology, instead indicates in the medical record, "Perhaps minimal asymmetric
17 granular opacity on the right. No consolidation. No discernable pneumothorax or
18 layering pleural effusion on limited supine imaging. Osseous structures appear within
19 normal limits for patient age."

20 1792. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
21 and other parties named and unnamed in this lawsuit, manipulated the medical records
22 in their own interpretations of the radiologist's report to paint Newborn baby J.A.S. and
23 Mrs. Smith as suffering the deleterious effects of methamphetamine to construct a

1 reason to keep Newborn baby J.A.S. in the hospital against the will and consent of his
2 parents.

3 1793. As represented in the medical documentation, beginning on April 10th, 2021, Mrs.
4 Smith was under constant monitoring by all Defendant St. Luke's Hospital and Onsite
5 Neonatal for "inappropriate behavior" via their agents, employees, and/or assigns.

6 1794. As of April 9th, 2021, Mr. Smith was not allowed to ever be on St. Luke's Hospital
7 Property at the consequence of being arrested.

8 1795. As of April 10th, 2021, Plaintiff Mrs. Smith was supervised around the clock by
9 male security guards, even while breastfeeding, and walking to the restroom.

10 1796. On the evening of April 9th, 2021, after Mr. & Mrs. Smith were ejected from St.
11 Luke's Hospital's property., Defendant Ms. Cynthia Shultz, MD, created an addendum
12 to Newborn baby J.A.S.'s medical records.

13 1797. The addendum written by Defendant Ms. Cynthia Shultz, MD is as follows:

14 "I was called by Dr. Marlino (OB) regarding a concerning
15 parental interaction.

16
17 Dr. Marlino reported that father became agitated and
18 confrontational after learning of the routine report to C&Y for
19 maternal and baby positive UDS screen. She stated that
20 father used offensive language and planned on taking baby
21 from NICU.
22

1 I then checked on infant and learned from nursing that father
2 had been in the room with infant with the intent of taking the
3 baby. Father left the NICU to obtain his car seat.

4
5 I then had nursing call security while I notified the NICU
6 medical director. NICU medical director notified hospital
7 legal and leadership team. The NICU and OB wards were
8 placed on security lock down. Next, police were called.

9
10 I was instructed to call C&Y to report the current situation. I
11 spoke with Tonya #402 and reported the events as stated
12 above. As this infant is on NC respiratory support, IV fluids
13 and IV antibiotics, he is not stable for discharge.

14
15 Per report from leadership, father was given a no
16 trespassing order and will be arrested if he returns to the
17 hospital.

18
19 Plan for the infant to remain in the NICU until clinically ready
20 for discharge and further guidance from C&Y and/or legal
21 team..[.]”

22 1798. Upon information and belief, Defendant Ms. Cynthia Shultz, MD participated in
23 and approved of a false narrative concerning Plaintiff Mr. Smith, that Plaintiff Mr. Smith

1 was in some way too dangerous or violent to be allowed to visit his son Newborn baby
2 J.A.S. on Defendant St. Luke's Hospital's property.

3 **The Libelous Statement**

4 1799. Upon information and belief, Defendant Ms. Cynthia Shultz, MD supported the
5 hostile atmosphere intentionally created by Defendants St. Luke's Hospital and/or
6 Onsite Neonatal against the Plaintiff Smith Family.

7 1800. Defendant Ms. Cynthia Shultz, MD, on April 9th, 2021, placed an addendum in
8 Newborn baby J.A.S.'s medical records including the libelous statement represented by
9 Defendant Ms. Cynthia Shultz, MD, "Per report from leadership, father was given a no
10 trespassing order and will be arrested if he returns to the hospital."

11 1801. Plaintiff Mr. Smith did not ever act in a manner befitting a no trespass order from
12 the Bethlehem Police Department at the behest of Defendants St. Luke's Hospital
13 and/or Onsite Neonatal.

14 1802. Upon information and belief, Defendant Ms. Cynthia Shultz, MD, supported the
15 false narrative created about Plaintiff Mr. Smith that Mr. Smith acted in a manner
16 befitting a no trespass order by the local police department.

17 1803. Upon information and belief, there is not any valid reason to place a father's legal
18 information in his newborn child's medical records.

19 1804. Upon information and belief, there is not any valid reason to place information
20 stating Defendant St. Luke's Hospital will criminally pursue legal measures against a
21 father in his newborn child's medical records.

1 1805. A likely reason to place legal information about a newborn child's father in that
2 child's medical records is to attempt to color Plaintiff Mr. Smith as a potentially criminally
3 violent person.

4 Libel Per Se VI(a)

5 1806. The statement in Newborn baby J.A.S.'s medical records as represented by
6 Defendant Ms. Cynthia Shultz, MD, that "Per report from leadership, father was given a
7 no trespassing order and will be arrested if he returns to the hospital," harmed the
8 reputation of Plaintiff Mr. Smith in the estimation of the community by stating that
9 Plaintiff Mr. Smith is an individual of criminal caliber, and that he acted in a manner
10 befitting a no trespassing order from the Bethlehem Police Department.

11 1807. The defamatory statement is harmful in character because it states that Plaintiff
12 Mr. Smith, at the behest of Defendants St. Luke's Hospital and/or Onsite Neonatal, is a
13 person capable of such violence that he cannot be permitted on Defendant St. Luke's
14 Hospital property to visit with his newborn baby child in the N.I.C.U.

15 1808. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement in
16 Newborn baby J.A.S.'s medical records where the statements were read by every
17 medical provider who thereafter consulted Newborn baby J.A.S.'s medical records for
18 an update on his status or history, as well as, other state parties when they became
19 involved in investigating the Smith Family.

20 1809. Upon information and belief, it can be demonstrated through Defendant
21 testimonies, examinations of medical records, and hospital policies, such as, in-person,
22 around the clock surveillance of a newborn baby child by hospital security officers, that

1 recipients of the publication understood that the meaning of the publication was that
2 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke's
3 Hospital to recover his child.

4 1810. Since the defamatory statement is contained within Newborn baby J.A.S.'s
5 medical records, and because Plaintiff Mr. Smith is the father of Newborn baby J.A.S. it
6 was clear that the defamatory statement was to be applied to Plaintiff Mr. Smith.

7 1811. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
8 exacerbating Plaintiff's mental health condition, causing a postpartum father to
9 needlessly suffer without his newborn baby who was in neonatal intensive care, staff
10 ratifying each other's invalid moral positions leading other staff to regard their
11 inappropriate actions with a sense of false righteousness, and a baseless reputation for
12 violent behavior, by Defendants St. Luke's Hospital and Onsite Neonatal through their
13 agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD.

14 1812. Upon information and belief, Defendants St. Luke's Hospital and Onsite
15 Neonatal, through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD,
16 abused her conditionally privileged occasion when as a medical provider with the ability
17 to alter and manipulate medical records, did represent and publish statements that
18 Plaintiff Mr. Smith acted with behavior requiring a no trespass order.

19 1813. Plaintiff Mr. Smith is a private individual and not a public figure.

20 1814. Since this is a case of a private figure plaintiff redressing issues of private
21 concern, the appropriate standard for this libel claim is one of negligence.

1 1815. Negligence: (1) Medical providers with the ability to alter medical records are
2 required to maintain records that do not place legal representations in those records
3 that reflect the legal status of someone other than the record holder themselves.

4 1816. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD cast
5 unnecessary and harmful aspersions in medical records when Defendant Ms. Cynthia
6 Shultz, MD represented in Newborn baby J.A.S.'s medical records that Plaintiff Mr.
7 Smith, "Per report from leadership, father was given a no trespassing order and will be
8 arrested if he returns to the hospital," which was a harmful and misleading
9 representation in Newborn baby J.A.S.'s medical records about the character of Plaintiff
10 Mr. Smith.

11 1817. Negligence: (3) Upon information and belief, but for the actions of the Defendant
12 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
13 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
14 earlier in this allegation of libelous defamation, as well, it is possible that Plaintiff Mr.
15 Smith would not have had pervasive and injurious inquiries about private family matters
16 by state officials.

17 1818. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
18 conduct, including but not limited to, emotional and psychological distress, pain and
19 suffering, and injury to his reputation.

1 1819. In *libel per se* cases Pennsylvania defamation law considers “Words that on their
2 face and without the aid of extrinsic evidence are recognized as injurious are actionable
3 per se....”¹¹⁵

4 1820. Upon information and belief, Defendants directly and unequivocally accused
5 Plaintiff Mr. Smith of being an individual violent enough that a no trespass order was
6 appropriate for his character, so much so, that such information should appear in his
7 newborn child’s medical records, are on their face and without the aid of extrinsic
8 evidence injurious, and actionable for a *libel per se* claim.

9 1821. In *libel pe se* cases, Pennsylvania law observes that, “words imputing a criminal
10 offense, loathsome disease, business misconduct or serious sexual misconduct” will be
11 considered defamatory per se.¹¹⁶

12 1822. Since Defendants directly and unequivocally accused Plaintiff Mr. Smith of
13 having the characteristics of a trespasser, and thereby a criminal, in his newborn child’s
14 medical records, and since trespassing is an act violating the law, the Defendants’
15 imputed a criminal offense, thereby making this an actionable *libel per se* claim.

16 1823. Upon information and belief, Plaintiff can demonstrate by a preponderance of
17 evidence that the Defendants St. Luke’s Hospital and/or Onsite Neonatal supervised
18 Ms. Cynthia Shultz, MD, in connection with this allegation and is therefore liable under a
19 legal theory of respondeat superior.

¹¹⁵*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

¹¹⁶*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 1824. Upon information and belief, Defendants St. Luke's Hospital, and/or Onsite
2 Neonatal, supervised Defendant Ms. Cynthia Shultz's conduct violated Plaintiffs' rights
3 under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

4 *Or, In the Alternative,*

5 *Libel Per Quod VI(b)*

6 1825. The statement in Newborn baby J.A.S.'s medical records as represented by
7 Defendant Ms. Cynthia Shultz, MD, that "Per report from leadership, father was given a
8 no trespassing order and will be arrested if he returns to the hospital," harmed the
9 reputation of Plaintiff Mr. Smith in the estimation of the community by stating that
10 Plaintiff Mr. Smith is an individual of criminal caliber, and that Plaintiff Mr. Smith acted in
11 a manner befitting a no trespassing order from the Bethlehem Police Department.

12 1826. The defamatory statement is harmful in character because it states that Plaintiff
13 Mr. Smith, at the behest of Defendants St. Luke's Hospital and/or Onsite Neonatal, is a
14 person capable of such violence that he cannot be permitted on Defendant St. Luke's
15 Hospital Property to visit with his newborn baby child in the N.I.C.U.

16 1827. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement in
17 Newborn baby J.A.S.'s medical records where the statements were read by every
18 medical provider who thereafter consulted Newborn baby J.A.S.'s medical records for
19 an update on his status or history, as well as, other state parties when they became
20 involved in investigating the Smith Family.

21 1828. Upon information and belief, it can be demonstrated through Defendant
22 testimonies, examinations of medical records, and hospital policies, such as, in-person,

1 around the clock surveillance of a newborn baby by hospital security officers, that
2 recipients of the publication understood that the meaning of the publication was that
3 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke's
4 Hospital to recover his child.

5 1829. Since the defamatory statement is contained within Newborn baby J.A.S.'s
6 medical records, and because Plaintiff Mr. Smith is the father of Newborn baby J.A.S., it
7 was clear that the defamatory statement was to be applied to Plaintiff Mr. Smith.

8 1830. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
9 exacerbating Plaintiff's mental health condition, causing a postpartum father to
10 needlessly suffer without his newborn baby child who was in neonatal intensive care,
11 staff ratifying each other's invalid moral positions leading other staff to regard their
12 inappropriate actions with a sense of false righteousness, and a baseless reputation for
13 violent behavior, by Defendants St. Luke's Hospital and Onsite Neonatal through their
14 agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD.

15 1831. Upon information and belief, Defendant St. Luke's Hospital and Onsite Neonatal,
16 through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD, abused
17 her conditionally privileged occasion when as a medical provider with the ability to alter
18 and manipulate medical records, did represent and publish statements that Plaintiff Mr.
19 Smith's behavior required a no trespass order.

20 1832. Plaintiff Mr. Smith is a private individual and not a public figure.

21 1833. Since this is a case of a private figure plaintiff redressing issues of private
22 concern, the appropriate standard for this libel claim is one of negligence.

1 1834. Negligence: (1) Medical providers with the ability to alter medical records are
2 required to maintain records that do not place legal representations in those records
3 that reflect the legal status of someone other than the record holder themselves.

4 1835. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD, cast
5 unnecessary and harmful aspersions in medical records when Defendant Ms. Cynthia
6 Shultz, MD, represented in Newborn baby J.A.S.'s medical records that Plaintiff Mr.
7 Smith, "Per report from leadership, father was given a no trespassing order and will be
8 arrested if he returns to the hospital," which was a harmful and misleading
9 representation in Newborn baby J.A.S.'s medical records about the character of Plaintiff
10 Mr. Smith.

11 1836. Negligence: (3) Upon information and belief, but for the actions of the Defendant
12 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
13 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
14 earlier in this allegation of libelous defamation, as well, it is possible that Plaintiff Mr.
15 Smith would not have had pervasive and injurious inquiries about private family matters
16 by state officials.

17 1837. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
18 conduct, including but not limited to, emotional and psychological distress, pain and
19 suffering, and injury to his reputation.

1 1838. In *libel per quod* cases Pennsylvania defamation law considers extrinsic
2 supporting evidence of libelous behavior if the injurious nature of the words is not
3 apparent.¹¹⁷

4 1839. Upon information and belief, Plaintiff can demonstrate by a preponderance of
5 evidence that through the presentation of medical records, informational reports, and
6 other administrative documentation that the libelous statement was not a mere
7 description of the father for the medical edification of potential diagnosis concerning
8 Newborn baby J.A.S., but was instead a statement intended to cast unfounded and
9 harmful aspersions on Plaintiff Mr. Smith.

10 1840. Plaintiff will need to demonstrate necessary innuendo by Defendant Parties.

11 1841. “Innuendo”, “define[s] the defamatory meaning which the plaintiff attaches to the
12 words” and “show[s] how they come to have that meaning and how they relate to the
13 plaintiff.”¹¹⁸

14 1842. A ‘no trespass’ order is not supposed to be contrived without meaning and
15 therefore carries with it the implied weight of violence if such a person were to trespass.

16 1843. When Defendant Ms. Cynthia Shultz, MD wrote the libelous statement with the
17 weight of the authority of her position it was to make clear to other medical
18 professionals, administrators, and/or county personnel that Plaintiff Mr. Smith is a

¹¹⁷Joseph, 959 A.2d at n.23.

¹¹⁸*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962)
(citations omitted).

1 person of violent nature who cannot be around his newborn baby child or hospital
2 personnel.

3 1844. The libelous statement relates to Plaintiff Mr. Smith because the statement is
4 about the father of the newborn child, Plaintiff Mr. Smith, and the libelous statement is in
5 Newborn baby J.A.S.'s medical records.

6 1845. Upon information and belief, Plaintiff can demonstrate by a preponderance of
7 evidence that the Defendants St. Luke's Hospital and/or Onsite Neonatal supervised
8 Ms. Cynthia Shultz, MD, in connection with this allegation and are therefore liable under
9 a legal theory of respondeat superior.

10 1846. Upon information and belief, Defendants St. Luke's Hospital, and/or Onsite
11 Neonatal, supervised Defendant Ms. Cynthia Shultz's conduct violated Plaintiffs' rights
12 under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

13 *Or, In the Alternative*

14 *Libel by Implication VI(c)*

15 1847. The statement in Newborn baby J.A.S.'s medical records as represented by
16 Defendant Ms. Cynthia Shultz, MD, that "Per report from leadership, father was given a
17 no trespassing order and will be arrested if he returns to the hospital," harmed the
18 reputation of Plaintiff Mr. Smith in the estimation of the community by stating that
19 Plaintiff Mr. Smith is an individual of criminal caliber, and that Plaintiff Mr. Smith acted in
20 a manner befitting a no trespassing order from the Bethlehem Police Department.

21 1848. The defamatory statement is harmful in character because it states that Plaintiff
22 Mr. Smith, at the behest of Defendants St. Luke's Hospital and/or Onsite Neonatal, is a

1 person capable of such violence that he cannot be permitted on Defendant St. Luke's
2 Hospital's property to visit with his newborn baby child in the N.I.C.U. or support his
3 postpartum wife.

4 1849. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement in
5 Newborn baby J.A.S.'s medical records where the statements were read by every
6 medical provider who thereafter consulted Newborn baby J.A.S.'s medical records for
7 an update on his status, as well as, other state parties when they became involved in
8 investigating the Smith Family.

9 1850. Upon information and belief, it can be demonstrated through Defendant
10 testimonies, examinations of medical records, and hospital policies, such as, in-person,
11 around the clock surveillance of a newborn baby child by hospital security officers, that
12 recipients of the publication understood that the meaning of the publication was that
13 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke's
14 Hospital to recover his child.

15 1851. Since the defamatory statement is contained within Newborn baby J.A.S.'s
16 medical records, and because Plaintiff Mr. Smith is the father of Newborn baby J.A.S. it
17 was clear that the defamatory statement was to be applied to Plaintiff Mr. Smith.

18 1852. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
19 exacerbating Plaintiff's mental health condition, causing a postpartum father to
20 needlessly suffer without his newborn baby child who was in neonatal intensive care,
21 staff ratifying each other's invalid moral positions leading other staff to regard their
22 inappropriate actions with a sense of false righteousness, and a baseless reputation for

1 violent behavior, by Defendants St. Luke's Hospital and Onsite Neonatal through their
2 agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD.

3 1853. Upon information and belief, Defendants St. Luke's Hospital and Onsite
4 Neonatal, through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD,
5 abused his conditionally privileged occasion when as a medical provider with the ability
6 to alter and manipulate medical records, did represent and publish statements that
7 Plaintiff Mr. Smith acted with behavior befitting a no trespass order.

8 1854. Plaintiff Mr. Smith is a private individual and not a public figure.

9 1855. Since this is a case of a private figure plaintiff redressing issues of private
10 concern, the appropriate standard for this libel claim is one of negligence.

11 1856. Negligence: (1) Medical providers with the ability to alter medical records are
12 required to maintain records that do not place legal representations in those records
13 that reflect the legal status of someone other than the record holder themselves.

14 1857. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD cast
15 unnecessary and harmful aspersions in medical records when Defendant Ms. Cynthia
16 Shultz, MD represented in Newborn baby J.A.S.'s medical records that Plaintiff Mr.
17 Smith, "Per report from leadership, father was given a no trespassing order and will be
18 arrested if he returns to the hospital," which was a harmful and misleading
19 representation in Newborn baby J.A.S.'s medical records about the character of Plaintiff
20 Mr. Smith.

21 1858. Negligence: (3) Upon information and belief, but for the actions of the Defendant
22 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
23 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned

1 earlier in this allegation of libelous defamation, as well, it is possible that Plaintiff Mr.
2 Smith would not have had pervasive and injurious inquiries about private family matters
3 by state officials.

4 1859. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
5 conduct, including but not limited to, emotional and psychological distress, pain and
6 suffering, and injury to his reputation.

7 1860. In *libel per quod* cases Pennsylvania defamation law considers extrinsic
8 supporting evidence of libelous behavior if the injurious nature of the words is not
9 apparent.¹¹⁹

10 1861. Upon information and belief, Plaintiff can demonstrate by a preponderance of
11 evidence that through the presentation of medical records, informational reports, and
12 other administrative documentation that the libelous statement was not a mere
13 description of the father for the medical edification of potential diagnosis concerning
14 Newborn baby J.A.S., but was instead a statement intended to cast unfounded and
15 harmful aspersions on Plaintiff Mr. Smith.

16 1862. Libel by Implication occurs when "true facts that in context imply a falsehood."¹²⁰

¹¹⁹Joseph, 959 A.2d at n.23.

¹²⁰*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

1 1863. In addition, “the literal accuracy of separate statements will not render a
2 communication ‘true’ where, as here, the implication of the communication as a whole
3 was false.”¹²¹

4 1864. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
5 preponderance of the evidence that any one statement in Newborn baby J.A.S.’s
6 medical records may be true, but the implication of the communications as a whole in
7 Newborn baby J.A.S.’s medical records is false.

8 1865. As well, if “the defendant juxtaposes [a] series of fact so as to imply a defamatory
9 connection between them, or [otherwise] creates a defamatory implication...” then a
10 libelous statement by implication is present.¹²²

11 1866. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
12 preponderance of the evidence that many facts contained within Newborn baby J.A.S.’s
13 medical records juxtapose a series of facts so as to imply a defamatory connection of
14 violent predilections by Plaintiff Mr. Smith.

15 1867. Although it may be literally true that, “Per report from leadership, father was given
16 a no trespassing order and will be arrested if he returns to the hospital,” a likely reason
17 to make that statement in Newborn baby J.A.S.’s medical records is to imply the
18 falsehood that Plaintiff Mr. Smith is of violent nature.

19 1868. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
20 preponderance of evidence that the Defendants St. Luke’s Hospital and/or Onsite

¹²¹*Id.* at 493.

¹²²*Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 Neonatal supervised Defendant Ms. Cynthia Shultz, MD, in connection with this
2 allegation and are therefore liable under a legal theory of respondeat superior.
3 1869. Upon information and belief, Defendants St. Luke's Hospital, and/or Onsite
4 Neonatal, supervised Defendant Ms. Cynthia Shultz's conduct violated Plaintiffs' rights
5 under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

6 **Damages for Libel VI(a-c)**

7 1870. Plaintiff Mr. Smith suffered substantial harm as a result of Defendants' conduct,
8 including but not limited to, emotional and psychological distress, pain and suffering,
9 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
10 compensatory damages to account for PTSD therapies and other related treatments as
11 they have been and will continue to be necessary; Plaintiff respectfully requests an
12 amount of \$595,000 in compensatory damages per Defendant.

13 1871. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
14 Neonatal, and Ms. Cynthia Shultz, MD, and therefore, their ability to afford the
15 appropriate training to avoid this egregious violation of the Pennsylvania Statutory Law,
16 and, since harm was actually caused to the current Plaintiff Smith Family, and since
17 harm is likely to continue to harm future postpartum families, and because the acts of
18 the Defendants and their agents, assigns, or employees callously disregarded the
19 Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the
20 imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
21 and Ms. Cynthia Shultz, MD to deter such Defendants from committing to such conduct
22 in the future which violates Commonwealth of Pennsylvania Statutory Law Plaintiffs

respectfully request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's Hospital, Onsite Neonatal, and Ms. Cynthia Shultz, MD.

1872. In the unlikely event that the jury does not find that Plaintiff Mr. Smith suffered any actual injury despite the deprivation of their statutory law rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

XXVIII. § 42 Pa. C. S. § 8343, Defamation - Libel VII

Mr. Michael O. Smith v. St. Luke's Hospital, Onsite Neonatal, & Mr. Patrick

Philpot, DO

1873. Under Pennsylvania defamation law, a communication will be considered defamatory if it "tends so to harm the reputation of [the complaining party] as to lower him in the estimation of the community or to deter third persons from associating or dealing with him."¹²³

1874. In order for Plaintiffs to succeed in their claim, they must prove the following elements¹²⁴.

- (1) The defamatory character of the communication;
- (2) Its publication by the defendant;
- (3) Its application to the plaintiff;

¹²³*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

¹²⁴42 Pa.C.S. § 8343(a)(1-7).

1 (4) The understanding by the recipient of its defamatory meaning;

2 (5) The understanding by the recipient of it as intended to be applied to the plaintiff;

3 (6) Special harm resulting to the plaintiff from its publication; and

4 (7) Abuse of a conditionally privileged occasion.

5 1875. The Pennsylvania Supreme Court has abolished an “actual malice” standard and
6 has shifted the inquiry to whether a plaintiff is a private individual or a public figure or
7 public official.¹²⁵

8 1876. Pennsylvania has adopted a negligence standard for private figure plaintiff
9 lawsuits regarding issues of private concern.¹²⁶

10 1877. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
11 or obligation recognized by the law, requiring the actor to conform to a certain standard
12 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
13 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
14 the interests of another.¹²⁷

15 **The Context**

¹²⁵*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the defendant can lead to wider array of potential damages.

¹²⁶*Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

¹²⁷*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 1878. Defendants St. Luke's Hospital and Onsite Neonatal, among other parties named
2 and unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
3 Family, including Plaintiff Mr. Smith.

4 1879. Defendant Mr. Patrick Philpot, DO supported the hostile atmosphere intentionally
5 created by Defendants St. Luke's Hospital and Onsite Neonatal.

6 1880. Defendants St. Luke's Hospital and Onsite Neonatal coordinated their employee,
7 agent, or assign, Defendant Mr. Patrick Philpot, DO, towards a narrative that Mrs. Smith
8 ingested methamphetamine and that Plaintiff Mrs. Smith gave birth to Newborn baby
9 J.A.S. who also suffered the deleterious effects of methamphetamine.

10 1881. The umbilical cord that connected Newborn baby J.A.S. and Mrs. Smith was
11 tested on April 9th, 2021, and was negative for amphetamines and methamphetamines.

12 1882. Despite the umbilical cord that connected Newborn baby J.A.S. and Mrs. Smith
13 testing negative for illegal drugs, Defendants St. Luke's Hospital and Onsite Neonatal,
14 acting through agent, employee, or assign Defendant Mr. Patrick Philpot, DO, continued
15 the narrative that Mrs. Smith ingested methamphetamine and that Mrs. Smith gave birth
16 to Newborn baby J.A.S. who also suffered the deleterious effects of methamphetamine.

17 1883. Medical records on April 9th, 2021, reflect the statement, "[F]amily was requesting
18 discharge at 12 hours of life."

19 1884. Mr. and Mrs. Smith requested at approximately 12-hours of Newborn baby
20 J.A.S.'s life that the Smith Family be discharged from Defendant St. Luke's Hospital
21 when practicable, not immediately at 12 hours from birth, as is suggested in the medical
22 records entered by Defendant St. Luke's Hospital agents, employees, and/or assigns.

1 1885. Defendants St. Luke's Hospital and Onsite Neonatal, through their agents,
2 employees, or assigns, were further attempting to imply that Mrs. Smith was urgently
3 seeking to go home so that she could consume methamphetamine by making the
4 medical records appear that Mrs. Smith sought to reingest methamphetamine by going
5 home as soon as possible after her newborn baby's birth.

6 1886. Beginning on April 10th, 2021 the statement, "High probability of life[-]threatening
7 clinical deterioration in infant's condition without treatment," began regularly appearing
8 in medical records.

9 1887. Mr. and Mrs. Smith were not ever told by any agent, employee, or assign of
10 Defendants St. Luke's Hospital or Onsite Neonatal that Newborn baby J.A.S. had a,
11 "High probability of life[-]threatening clinical deterioration...without treatment."

12 1888. Despite the accusation of methamphetamine use by Defendants St. Luke's
13 Hospital and Onsite Neonatal and their agents, assigns, or employees, Plaintiff Mrs.
14 Smith was allowed to breastfeed Newborn baby J.A.S.

15 1889. Despite Plaintiffs Mrs. Smith and Newborn baby J.A.S. suspected of suffering the
16 deleterious effects of methamphetamine, state mandated policies and procedures for
17 methamphetamine withdrawal were not implemented for Newborn baby J.A.S. by
18 Defendants St. Luke's Hospital, Onsite Neonatal, nor any other health provider.

19 1890. Notes on medical records by non-radiology experts from April 11th, 2021, stated
20 that, "...upon admission to the NICU [newborn baby J.A.S.] showed hazy lung fields
21 with expansion to 5-9 ribs."

22 1891. Radiology indicates in the medical record no "hazy lung fields" or "expansion"
23 into Newborn baby J.A.S.'s lungs.

1 1892. Radiology, instead indicates in the medical record, "Perhaps minimal asymmetric
2 granular opacity on the right. No consolidation. No discernable pneumothorax or
3 layering pleural effusion on limited supine imaging. Osseous structures appear within
4 normal limits for patient age."

5 1893. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
6 and other parties named and unnamed in this lawsuit, manipulated the medical records
7 in their own interpretations of the radiologist's report to paint Newborn baby J.A.S. and
8 Mrs. Smith as suffering the deleterious effects of methamphetamine by constructing a
9 reason to keep Newborn baby J.A.S. in the hospital against the will and consent of his
10 parents.

11 1894. As represented in the medical documentation, beginning on April 10th, 2021, Mrs.
12 Smith was under constant monitoring by all Defendant St. Luke's Hospital and Onsite
13 Neonatal for "inappropriate behavior" via their agents, employees, and/or assigns.

14 1895. As of April 9th, 2021, Mr. Smith was not allowed to ever be on Defendant St.
15 Luke's Hospital's property at the consequence of being arrested.

16 1896. As of April 10th, 2021, Mrs. Smith was supervised around the clock by male
17 security guards, even while breastfeeding, and walking to the restroom.

18 1897. On the evening of April 10th, 2021, before Mrs. Smith was reunited with Newborn
19 baby J.A.S., Defendant Mr. Patrick Philpot, DO created an addendum to Newborn baby
20 J.A.S.'s medical records.

21 1898. The addendum written by Defendant Mr. Patrick Philpot, DO is as follows:

22 "Ongoing social concerns discussed with NICU medical
23 director, Dr. Costello, and Charge RN Mary following input

1 from SL on-call CM. Dr. Costello spoke with St. Luke's legal
2 representative, Steve, who has been involved with the case.
3 Per legal, FOB is unable to visit patient as he was given a
4 no-trespassing order by Bethlehem Township police
5 yesterday. As mother has been appropriate throughout the
6 day and has not been involved in legal actions, per Steve in
7 SL legal, mother may visit with supervision. SLRA hospital
8 supervisor spoke with charge RN Mary as well as Darla
9 Frack, hospital administrator, and plan going forward will be
10 that if mother visits, she can be allowed into the NICU with
11 security supervision within the baby's NICU pod. MOB may
12 only visit alone per St. Luke's visitation policy allowing only
13 parents to visit and FOB may not visit. If MOB's behavior is
14 inappropriate, she will not be allowed to visit the NICU until
15 the baby is cleared for discharge by CYS."

16 1899. Upon information and belief, Defendant Mr. Patrick Philpot, DO participated in
17 and approved of a false narrative concerning Plaintiff Mr. Smith, that Plaintiff Mr. Smith
18 was in some way too dangerous or violent to be allowed to visit his son Newborn baby
19 J.A.S. on St. Luke's Hospital's property.

20 **The Libelous Statement**

1 1900. Upon information and belief, Defendant Mr. Patrick Philpot, DO supported the
2 hostile atmosphere intentionally created by Defendants St. Luke's Hospital and Onsite
3 Neonatal against the Plaintiff Smith Family.

4 1901. Defendant Mr. Patrick Philpot, DO, on April 10th, 2021, placed an addendum in
5 Newborn baby J.A.S. medical records including the libelous statement represented by
6 Defendant Mr. Philpot, DO, "Per legal, FOB is unable to visit patient as he was given a
7 no-trespassing order by Bethlehem Township police yesterday."

8 1902. Plaintiff Mr. Smith did not ever act in a manner befitting a no trespass order from
9 the Bethlehem Police Department at the behest of Defendants St. Luke's Hospital
10 and/or Onsite Neonatal.

11 1903. Upon information and belief, Defendant Mr. Patrick Philpot, DO supported the
12 false narrative created about Plaintiff Mr. Smith that Plaintiff Mr. Smith acted in a
13 manner befitting a no trespass order by the local police department.

14 1904. Upon information and belief, there is not any valid reason to place a father's legal
15 information in his newborn child's medical records.

16 1905. Upon information and belief, there is not any valid reason to place information
17 stating Defendant St. Luke's Hospital will criminally pursue legal measures against a
18 father in his newborn child's medical records.

19 1906. A likely reason to place legal information about a newborn child's father in that
20 child's medical records is to attempt to color Plaintiff Mr. Smith as a potentially criminally
21 violent person.

22 *Libel Per Se VII(a)*

1 1907. The statement in Newborn baby J.A.S.'s medical records as represented by
2 Defendant Mr. Patrick Philpot, DO, that "Per legal, FOB is unable to visit patient as he
3 was given a no-trespassing order by Bethlehem Township police yesterday.," harmed
4 the reputation of Plaintiff Mr. Smith in the estimation of the community by stating that
5 Plaintiff Mr. Smith is an individual of criminal caliber, and that acted in a manner befitting
6 a no trespassing order from the Bethlehem Police Department.

7 1908. The defamatory statement is harmful in character because it states that Plaintiff
8 Mr. Smith, at the behest of Defendants St. Luke's Hospital and/or Onsite Neonatal, is a
9 person capable of such violence that he cannot be permitted on Defendant St. Luke's
10 Hospital Property to visit with his newborn baby child in the N.I.C.U.

11 1909. Defendant Mr. Patrick Philpot, DO, published the defamatory statement in
12 Newborn baby J.A.S.'s medical records where the statements were read by every
13 medical provider who thereafter consulted Newborn baby J.A.S.'s medical records for
14 an update on his status, as well as, other state parties when they became involved in
15 investigating the Smith Family.

16 1910. Upon information and belief, it can be demonstrated through Defendant
17 testimonies, examinations of medical records, and hospital policies, such as, in-person,
18 around the clock surveillance of a newborn baby by hospital security officers, that
19 recipients of the publication understood that the meaning of the publication was that
20 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke's
21 Hospital to recover his child.

1 1911. Since the defamatory statement is contained within Newborn baby J.A.S.'s
2 medical records, and because Plaintiff Mr. Smith is the father of Newborn baby J.A.S. it
3 was clear that the defamatory statement was to be applied to Plaintiff Mr. Smith.

4 1912. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
5 exacerbating Plaintiff's mental health condition, causing a postpartum father to
6 needlessly suffer without his newborn baby child who was in neonatal intensive care,
7 staff ratifying each other's invalid moral positions leading other staff to regard their
8 inappropriate actions with a sense of false righteousness, and a baseless reputation for
9 violent behavior, by Defendants St. Luke's Hospital and Onsite Neonatal through their
10 agent, employee, or assign, Defendant Mr. Patrick Philpot, DO.

11 1913. Upon information and belief, Defendants St. Luke's Hospital and Onsite
12 Neonatal, through their agent, employee, or assign, Defendant Mr. Patrick Philpot, DO,
13 abused his conditionally privileged occasion when as a medical provider with the ability
14 to alter and manipulate medical records, did represent and publish statements that
15 Plaintiff Mr. Smith acted with behavior befitting a no trespass order.

16 1914. Plaintiff Mr. Smith is a private individual and not a public figure.

17 1915. Since this is a case of a private figure plaintiff redressing issues of private
18 concern, the appropriate standard for this libel claim is one of negligence.

19 1916. Negligence: (1) Medical providers with the ability to alter medical records are
20 required to maintain records that do not place legal representations in those records
21 that reflect the legal status of someone other than the record holder themselves.

22 1917. Negligence: (2) Medical provider Defendant Mr. Patrick Philpot, DO cast
23 unnecessary and harmful aspersions in medical records when Defendant Mr. Patrick

1 Philpot, DO represented in Newborn baby J.A.S.'s medical records that Plaintiff Mr.
2 Smith, "Per legal, FOB is unable to visit patient as he was given a no-trespassing order
3 by Bethlehem Township police yesterday," which was a harmful and misleading
4 representation in Newborn baby J.A.S.'s medical records about the character of Plaintiff
5 Mr. Smith.

6 1918. Negligence: (3) Upon information and belief, but for the actions of the Defendant
7 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
8 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
9 earlier in this allegation of libelous defamation, as well, it is possible that Plaintiff Mr.
10 Smith would not have had pervasive and injurious inquiries about private family matters
11 by state officials.

12 1919. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
13 conduct, including but not limited to, emotional and psychological distress, pain and
14 suffering, and injury to his reputation.

15 1920. In *libel per se* cases Pennsylvania defamation law considers "Words that on their
16 face and without the aid of extrinsic evidence are recognized as injurious are actionable
17 per se...."¹²⁸

18 1921. Upon information and belief, Defendants' directly and unequivocally accused
19 Plaintiff Mr. Smith of being an individual violent enough that a no trespass order was
20 appropriate for his character, so much so, that such information should appear in his

¹²⁸*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

1 newborn child's medical records, are on their face and without the aid of extrinsic
2 evidence injurious, and actionable for a *libel per se* claim.

3 1922. In *libel pe se* cases, Pennsylvania law observes that, "words imputing a criminal
4 offense, loathsome disease, business misconduct or serious sexual misconduct" will be
5 considered defamatory per se.¹²⁹

6 1923. Since Defendants' directly and unequivocally accused Plaintiff Mr. Smith of
7 having the characteristics of a trespasser, and thereby a criminal, in his newborn child's
8 medical records, and since trespassing is an act violating the law, the Defendants'
9 imputed a criminal offense, thereby making this an actionable *libel per se* claim.

10 1924. Upon information and belief, Plaintiff can demonstrate by a preponderance of
11 evidence that the Defendants Private Entities St. Luke's Hospital and/or Onsite
12 Neonatal supervised Defendant Mr. Patrick Philpot, DO, in connection with this
13 allegation and is therefore liable under a legal theory of respondeat superior.

14 1925. Upon information and belief, Defendants St. Luke's Hospital, and/or Onsite
15 Neonatal, supervised Defendant Mr. Patrick Philpot, DO's conduct which violated
16 Plaintiffs' rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

17 *Or, In the Alternative,*

18 *Libel Per Quod VII(b)*

19 1926. The statement in Newborn baby J.A.S.'s medical records as represented by
20 Defendant Mr. Patrick Philpot, DO, that "Per legal, FOB is unable to visit patient as he

¹²⁹*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 was given a no-trespassing order by Bethlehem Township police yesterday.,” harmed
2 the reputation of Plaintiff Mr. Smith in the estimation of the community by stating that
3 Plaintiff Mr. Smith is an individual of criminal caliber, and that Mr. Smith acted in a
4 manner befitting a no trespassing order from the Bethlehem Police Department.

5 1927. The defamatory statement is harmful in character because it states that Plaintiff
6 Mr. Smith, at the behest of Defendants St. Luke’s Hospital and/or Onsite Neonatal, is a
7 person capable of such violence that he cannot be permitted on Defendant St. Luke’s
8 Hospital’s property to visit with his newborn baby in the N.I.C.U.

9 1928. Defendant Mr. Patrick Philpot, DO, published the defamatory statement in
10 Newborn baby J.A.S.’s medical records where the statements were read by every
11 medical provider who thereafter consulted Newborn baby J.A.S.’s medical records for
12 an update on his status, as well as, other state parties when they became involved in
13 investigating the Smith Family.

14 1929. Upon information and belief, it can be demonstrated through Defendant
15 testimonies, examinations of medical records, and hospital policies, such as, in-person,
16 around the clock surveillance of a newborn baby by hospital security officers, that
17 recipients of the publication understood that the meaning of the publication was that
18 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke’s
19 Hospital to recover his child.

20 1930. Since the defamatory statement is contained within Newborn baby J.A.S.’s
21 medical records, and because Plaintiff Mr. Smith is the father of Newborn baby J.A.S. it
22 was clear that the defamatory statement was to be applied to Plaintiff Mr. Smith.

1 1931. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
2 exacerbating Plaintiff's mental health condition, causing a postpartum father to
3 needlessly suffer without his newborn baby child who was in neonatal intensive care,
4 staff ratifying each other's invalid moral positions leading other staff to regard their
5 inappropriate actions with a sense of false righteousness, and a baseless reputation for
6 violent behavior, by Defendants St. Luke's Hospital and Onsite Neonatal through their
7 agent, employee, or assign, Defendant Mr. Patrick Philpot, DO.

8 1932. Upon information and belief, Defendants St. Luke's Hospital and Onsite
9 Neonatal, through their agent, employee, or assign, Defendant Mr. Patrick Philpot, DO,
10 abused his conditionally privileged occasion when as a medical provider with the ability
11 to alter and manipulate medical records, did represent and publish statements that
12 Plaintiff Mr. Smith acted with behavior befitting a no trespass order.

13 1933. Plaintiff Mr. Smith is a private individual and not a public figure.

14 1934. Since this is a case of a private figure plaintiff redressing issues of private
15 concern, the appropriate standard for this libel claim is one of negligence.

16 1935. Negligence: (1) Medical providers with the ability to alter medical records are
17 required to maintain records that do not place legal representations in those records
18 that reflect the legal status of someone other than the record holder themselves.

19 1936. Negligence: (2) Medical provider Plaintiff Mr. Patrick Philpot, DO cast
20 unnecessary and harmful aspersions in medical records when Defendant Mr. Patrick
21 Philpot, DO represented in Newborn baby J.A.S.'s medical records that Plaintiff Mr.
22 Smith, "Per legal, FOB is unable to visit patient as he was given a no-trespassing order
23 by Bethlehem Township police yesterday," which was a harmful and misleading

1 representation in Newborn baby J.A.S.'s medical records about the character of Plaintiff
2 Mr. Smith.

3 1937. Negligence: (3) Upon information and belief, but for the actions of the Defendant
4 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
5 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
6 earlier in this allegation of libelous defamation, as well, it is possible that Plaintiff Mr.
7 Smith would not have had pervasive and injurious inquiries about private family matters
8 by state officials.

9 1938. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
10 conduct, including but not limited to, emotional and psychological distress, pain and
11 suffering, and injury to his reputation.

12 1939. In *libel per quod* cases Pennsylvania defamation law considers extrinsic
13 supporting evidence of libelous behavior if the injurious nature of the words is not
14 apparent.¹³⁰

15 1940. Upon information and belief, Plaintiff can demonstrate by a preponderance of
16 evidence that through the presentation of medical records, informational reports, and
17 other administrative documentation that the libelous statement was not a mere
18 description of the father for the medical edification of potential diagnosis concerning
19 Newborn baby J.A.S., but was instead a statement intended to cast unfounded and
20 harmful aspersions on Plaintiff Mr. Smith.

21 1941. Plaintiff will need to demonstrate necessary innuendo by Defendant Parties.

¹³⁰Joseph, 959 A.2d at n.23.

1 1942. “Innuendo”, “define[s] the defamatory meaning which the plaintiff attaches to the
2 words” and “show[s] how they come to have that meaning and how they relate to the
3 plaintiff.”¹³¹

4 1943. A ‘no trespass’ order is not supposed to be contrived without meaning and
5 therefore carries with it the implied weight of violence if such a person were to trespass.

6 1944. When Defendant Mr. Patrick Philpot, DO wrote the libelous statement with the
7 weight of the authority of his position it was to make clear to other medical
8 professionals, administrators, and/or county personnel that Plaintiff Mr. Smith is a
9 person of violent nature who cannot be around his newborn baby or hospital personnel.

10 1945. The libelous statement relates to Plaintiff Mr. Smith because the statement is
11 about the father of the newborn child, Plaintiff Mr. Smith, and the libelous statement is in
12 Newborn baby J.A.S.’s medical records.

13 1946. Upon information and belief, Plaintiff can demonstrate by a preponderance of
14 evidence that the Defendants St. Luke’s Hospital and/or Onsite Neonatal supervised Mr.
15 Patrick Philpot, DO, in connection with this allegation and are therefore liable under a
16 legal theory of respondeat superior.

17 1947. Upon information and belief, Defendants St. Luke’s Hospital, and/or Onsite
18 Neonatal, supervised Defendant Mr. Patrick Philpot, DO’s conduct which violated
19 Plaintiffs’ rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

¹³¹*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962)
(citations omitted).

1 *Or, In the Alternative*

2 *Libel by Implication VII(c)*

3 1948. The statement in Newborn baby J.A.S.'s medical records as represented by
4 Defendant Mr. Patrick Philpot, DO, that "Per legal, FOB is unable to visit patient as he
5 was given a no-trespassing order by Bethlehem Township police yesterday.," harmed
6 the reputation of Plaintiff Mr. Smith in the estimation of the community by stating that
7 Plaintiff Mr. Smith is an individual of criminal caliber, and that acted in a manner befitting
8 a no trespassing order from the Bethlehem Police Department.

9 1949. The defamatory statement is harmful in character because it states that Plaintiff
10 Mr. Smith, at the behest of Defendants St. Luke's Hospital and/or Onsite Neonatal, is a
11 person capable of such violence that he cannot be permitted on Defendant St. Luke's
12 Hospital Property to visit with his newborn baby child in the N.I.C.U.

13 1950. Defendant Mr. Patrick Philpot, DO, published the defamatory statement in
14 Newborn baby J.A.S.'s medical records where the statements were read by every
15 medical provider who thereafter consulted Newborn baby J.A.S.'s medical records for
16 an update on his status, as well as, other state parties when they became involved in
17 investigating the Smith Family.

18 1951. Upon information and belief, it can be demonstrated through Defendant
19 testimonies, examinations of medical records, and hospital policies, such as, in-person,
20 around the clock surveillance of a newborn baby child by hospital security officers, that
21 recipients of the publication understood that the meaning of the publication was that

1 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke's
2 Hospital to recover his child.

3 1952. Since the defamatory statement is contained within Newborn baby J.A.S.'s
4 medical records, and because Plaintiff Mr. Smith is the father of Newborn baby J.A.S. it
5 was clear that the defamatory statement was to be applied to Plaintiff Mr. Smith.

6 1953. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
7 exacerbating Plaintiff's mental health condition, causing a postpartum father to
8 needlessly suffer without his newborn baby child who was in neonatal intensive care,
9 staff ratifying each other's invalid moral positions leading other staff to regard their
10 inappropriate actions with a sense of false righteousness, and a baseless reputation for
11 violent behavior, by Defendants St. Luke's Hospital and Onsite Neonatal through their
12 agent, employee, or assign, Defendant Mr. Patrick Philpot, DO.

13 1954. Upon information and belief, Defendants St. Luke's Hospital and Onsite
14 Neonatal, through their agent, employee, or assign, Defendant Mr. Patrick Philpot, DO,
15 abused his conditionally privileged occasion when as a medical provider with the ability
16 to alter and manipulate medical records, did represent and publish statements that
17 Plaintiff Mr. Smith acted with behavior befitting a no trespass order.

18 1955. Plaintiff Mr. Smith is a private individual and not a public figure.

19 1956. Since this is a case of a private figure plaintiff redressing issues of private
20 concern, the appropriate standard for this libel claim is one of negligence.

21 1957. Negligence: (1) Medical providers with the ability to alter medical records are
22 required to maintain records that do not place legal representations in those records
23 that reflect the legal status of someone other than the record holder themselves.

1 1958. Negligence: (2) Medical provider Defendant Mr. Patrick Philpot, DO cast
2 unnecessary and harmful aspersions in medical records when Defendant Mr. Patrick
3 Philpot, DO represented in Newborn baby J.A.S.'s medical records that Plaintiff Mr.
4 Smith, "Per legal, FOB is unable to visit patient as he was given a no-trespassing order
5 by Bethlehem Township police yesterday," which was a harmful and misleading
6 representation in Newborn baby J.A.S.'s medical records about the character of Plaintiff
7 Mr. Smith.

8 1959. Negligence: (3) Upon information and belief, but for the actions of the Defendant
9 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
10 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
11 earlier in this allegation of libelous defamation, as well, it is possible that Plaintiff Mr.
12 Smith would not have had pervasive and injurious inquiries about private family matters
13 by state officials.

14 1960. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
15 conduct, including but not limited to, emotional and psychological distress, pain and
16 suffering, and injury to his reputation.

17 1961. In *libel per quod* cases Pennsylvania defamation law considers extrinsic
18 supporting evidence of libelous behavior if the injurious nature of the words is not
19 apparent.¹³²

20 1962. Upon information and belief, Plaintiff can demonstrate by a preponderance of
21 evidence that through the presentation of medical records, informational reports, and

¹³²Joseph, 959 A.2d at n.23.

1 other administrative documentation that the libelous statement was not a mere
2 description of the father for the medical edification of potential diagnosis concerning
3 Newborn baby J.A.S., but was instead a statement intended to cast unfounded and
4 harmful aspersions on Plaintiff Mr. Smith.

5 1963. Libel by Implication occurs when “true facts that in context imply a falsehood.”¹³³

6 1964. In addition, “the literal accuracy of separate statements will not render a
7 communication ‘true’ where, as here, the implication of the communication as a whole
8 was false.”¹³⁴

9 1965. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
10 preponderance of the evidence that any one statement in Newborn baby J.A.S.’s
11 medical records may be true, but the implication of the communications as a whole in
12 Newborn baby J.A.S.’s medical records is false.

13 1966. As well, if “the defendant juxtaposes [a] series of fact so as to imply a defamatory
14 connection between them, or [otherwise] creates a defamatory implication...” then a
15 libelous statement by implication is present.¹³⁵

16 1967. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
17 preponderance of the evidence that many facts contained within Newborn baby J.A.S.’s

¹³³*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

¹³⁴*Id.* at 493.

¹³⁵*Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 medical records juxtapose a series of facts so as to imply a defamatory connection of
2 violent predilections by Plaintiff Mr. Smith.

3 1968. Although it may be literally true that, “Per legal, FOB is unable to visit patient as
4 he was given a no-trespassing order by Bethlehem Township Police yesterday[,]” the
5 only reason to make that statement in Newborn baby J.A.S.’s medical records is to
6 imply the falsehood that Plaintiff Mr. Smith is of violent nature.

7 1969. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
8 preponderance of evidence that the Defendants St. Luke’s Hospital and/or Onsite
9 Neonatal supervised Defendant Mr. Patrick Philpot, DO, in connection with this
10 allegation and are therefore liable under a legal theory of respondeat superior.

11 1970. Upon information and belief, Defendants St. Luke’s Hospital, and/or Onsite
12 Neonatal, supervised Defendant Mr. Patrick Philpot, DO’s conduct which violated
13 Plaintiffs’ rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

14 **Damages for Libel VII(a-c)**

15 1971. Plaintiff Mr. Smith suffered substantial harm as a result of Defendants’ conduct,
16 including but not limited to, emotional and psychological distress, pain and suffering,
17 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
18 compensatory damages to account for PTSD therapies and other related treatments as
19 they have been and will continue to be necessary; Plaintiff respectfully requests an
20 amount of \$595,000 in compensatory damages per Defendant.

21 1972. Given the substantial wealth of the Defendants St. Luke’s Hospital, Onsite
22 Neonatal, and Mr. Patrick Philpot, DO, and therefore, their ability to afford the
23 appropriate training to avoid this egregious violation of the Pennsylvania Statutory Law,

1 and, since harm was actually caused to the current Plaintiff Smith Family, and since
 2 harm is likely to continue to harm future postpartum families, and because the acts of
 3 the Defendants and their agents, assigns, or employees callously disregarded the
 4 Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the
 5 imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
 6 and Mr. Patrick Philpot, DO to deter such Defendants from committing to such conduct
 7 in the future which violates Commonwealth of Pennsylvania Statutory Law Plaintiffs
 8 respectfully request an amount of \$5,000,000 in punitive damages per Defendant Mr.
 9 Patrick Philpot, DO; and \$10,000,000 per Defendants St. Luke's Hospital, and Onsite
 10 Neonatal.

11 1973. In the unlikely event that the jury does not find that Plaintiff Mr. Smith suffered
 12 any actual injury despite the deprivation of his statutory law rights, the Plaintiff
 13 respectfully requests a nominal judgment of \$1.00.

14 **XXIX. § 42 Pa. C. S. § 8343, Defamation - Slander I**

15 Newborn baby J.A.S. and Mrs. Smith v. St. Luke's Hospital, OBHG PA, & Ms. Teresa

16 Marlino, MD

17 1974. Under Pennsylvania defamation law, a communication will be considered
 18 defamatory if it “tends so to harm the reputation of [the complaining party] as to lower

1 him in the estimation of the community or to deter third persons from associating or
2 dealing with him.”¹³⁶

3 1975. In order for Plaintiffs to succeed in their claim, they must prove the following
4 elements¹³⁷.

5 (1) The defamatory character of the communication;

6 (2) Its publication by the defendant;

7 (3) Its application to the plaintiff;

8 (4) The understanding by the recipient of its defamatory meaning;

9 (5) The understanding by the recipient of it as intended to be applied to the plaintiff;

10 (6) Special harm resulting to the plaintiff from its publication; and

11 (7) Abuse of a conditionally privileged occasion.

12 1976. The Pennsylvania Supreme Court has abolished an “actual malice” standard and
13 has shifted the inquiry to whether a plaintiff is a private individual or a public figure or
14 public official.¹³⁸

¹³⁶*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

¹³⁷42 Pa.C.S. § 8343(a)(1-7).

¹³⁸*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the plaintiff can lead to wider array of potential damages.

1 1977. Pennsylvania has adopted a negligence standard for private figure plaintiff
2 lawsuits regarding issues of private concern.¹³⁹

3 1978. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
4 or obligation recognized by the law, requiring the actor to conform to a certain standard
5 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
6 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
7 the interests of another.¹⁴⁰

8 **The Context**

9 1979. Defendants St. Luke's Hospital, and OBHG PA, among other parties named and
10 unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
11 Family, including Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

12 1980. Upon information and belief, Defendant Ms. Teresa Marlino, MD, supported the
13 hostile atmosphere intentionally created by Defendants St. Luke's Hospital, and OBHG
14 PA.

15 1981. Defendants St. Luke's Hospital, and OBHG PA coordinated their employee,
16 agent, or assign, including Defendant Ms. Teresa Marlino, MD, towards a narrative that
17 Plaintiff Mrs. Smith ingested methamphetamine and that Plaintiff Mrs. Smith gave birth
18 to Newborn baby J.A.S. who also suffered the deleterious effects of methamphetamine.

¹³⁹*Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

¹⁴⁰*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 1982. The umbilical cord that connected Plaintiffs Newborn baby J.A.S. and Mrs. Smith
2 was tested on April 9th, 2021, and was negative for amphetamines and
3 methamphetamines.

4 1983. Despite the umbilical cord that connected Plaintiffs Newborn baby J.A.S. and
5 Mrs. Smith testing negative for illegal drugs, Defendants St. Luke's Hospital, and OBHG
6 PA, acting through agent, employee, or assign Defendant Ms. Teresa Marlino, MD,
7 continued the narrative that Plaintiff Mrs. Smith ingested methamphetamine and that
8 Plaintiff Mrs. Smith gave birth to Plaintiff Newborn baby J.A.S. who also suffered the
9 deleterious effects of methamphetamine.

10 1984. Medical records on April 9th, 2021, reflect the statement, "[F]amily was requesting
11 discharge at 12 hours of life."

12 1985. Mr. and Mrs. Smith requested at approximately 12-hours of Plaintiff Newborn
13 baby J.A.S.'s life that the Smith Family be discharged from Defendant St. Luke's
14 Hospital when practicable, not immediately at 12 hours from birth, as is suggested in the
15 medical records entered by Defendant St. Luke's Hospital agents, employees, and/or
16 assigns.

17 1986. Defendant St. Luke's Hospital, and OBHG PA through their agents, employees,
18 or assigns, was further attempting to imply that Plaintiff Mrs. Smith was urgently seeking
19 to go home so that she could consume methamphetamine by making the medical
20 records appear that Plaintiff Mrs. Smith quickly sought to reingest methamphetamine by
21 going home as soon as possible after her newborn baby's birth.

1 1987. Beginning on April 10th, 2021 the statement, “High probability of life[-]threatening
2 clinical deterioration in infant’s condition without treatment,” began regularly appearing
3 in medical records.

4 1988. Mr. and Mrs. Smith were not ever told by any agent, employee, or assign of
5 Defendants St. Luke’s Hospital, and, OBHG PA that Plaintiff Newborn baby J.A.S. had
6 a, “High probability of life[-]threatening clinical deterioration...without treatment.”

7 1989. Despite the accusation of methamphetamine use by Defendants St. Luke’s
8 Hospital and OBHG PA and their agents, assigns, or employees, Plaintiff Mrs. Smith
9 was allowed to breastfeed Plaintiff Newborn baby J.A.S.

10 1990. Despite Plaintiffs Mrs. Smith and Plaintiff Newborn baby J.A.S. being suspected
11 of suffering the deleterious effects of methamphetamine, state mandated policies and
12 procedures for methamphetamine withdrawal were not implemented for Plaintiff
13 Newborn baby J.A.S. by Defendants St. Luke’s Hospital, and OBHG PA, nor any other
14 health provider.

15 1991. Notes on medical records by non-radiology experts from April 11th, 2021, stated
16 that, “...upon admission to the NICU [newborn baby J.A.S.] showed hazy lung fields
17 with expansion to 5-9 ribs.”

18 1992. Radiology indicates in the medical record no “hazy lung fields” or “expansion”
19 into Plaintiff Newborn baby J.A.S.’s lungs.

20 1993. Radiology, instead indicates in the medical record, “Perhaps minimal asymmetric
21 granular opacity on the right. No consolidation. No discernable pneumothorax or
22 layering pleural effusion on limited supine imaging. Osseous structures appear within
23 normal limits for patient age.”

1 1994. Upon information and belief, Defendants St. Luke's Hospital, and OBHG PA, and
2 other parties named and unnamed in this lawsuit, manipulated the medical records in
3 their own interpretations of the radiologist's report to paint Plaintiffs Newborn baby
4 J.A.S. and Mrs. Smith as suffering the deleterious effects of methamphetamine by
5 constructing a reason to keep Plaintiff Newborn baby J.A.S. in the hospital against the
6 will and consent of his parents.

7 1995. As represented in the medical documentation, beginning on April 10th, 2021,
8 Plaintiff Mrs. Smith was under constant monitoring by Defendant St. Luke's Hospital,
9 and, OBHG PA for "inappropriate behavior" via their agents, employees, and/or assigns.

10 1996. As of April 9th, 2021, Mr. Smith was not allowed to ever be on Defendant St.
11 Luke's Hospital Property at the consequence of being arrested.

12 1997. As of April 10th, 2021, Plaintiff Mrs. Smith was supervised around the clock by
13 male security guards, even while breastfeeding, and walking to the restroom.

14 **Additional Context & The Slandorous Statement**

15 1998. Upon information and belief, Defendant Ms. Teresa Marlino, MD supported the
16 hostile atmosphere intentionally created by Defendant St. Luke's Hospital, and OBHG
17 PA, against the Plaintiff Smith Family.

18 1999. Defendant Ms. Teresa Marlino, MD, on April 9th, 2021 in Bethlehem Township
19 Police Department records, written under the heading "DISTURBANCE -UNWANTED
20 PERSON /" (*all caps in original document*) by Officer Andrew Keyock, Ms. Teresa
21 Marlino, MD, represented that Mrs. Smith "...had a baby born with marijuana and meth
22 in her system...."

1 2000. Upon information and belief, Defendant Ms. Teresa Marlino, MD, on April 9th,
2 2021, communicated to Officers Andrew Keyock and Thomas A. Smith, that Plaintiffs
3 Mrs. Smith and Newborn baby J.A.S. tested positive for the illegal and harmful
4 controlled substance methamphetamine.

5 2001. Defendant Ms. Teresa Marlino, MD, on April 9th, 2021 represented the statement
6 to Officers Keyock and Smith in person, where those representations were then
7 transcribed into a police record that can be accessed by the public.

8 2002. Plaintiff Mrs. Smith did not ever test positive for methamphetamine.

9 2003. Plaintiff Newborn baby J.A.S. did not ever test positive for methamphetamine.

10 2004. There is not any valid reason to communicate an individual's medical information
11 to police, as that is a violation of the individual's right to medical privacy; each
12 individual's medical records should remain only contained within the four corners of that
13 patient's medical records and not beyond.

14 2005. There is not any valid reason to communicate false medical information about a
15 postpartum mother and her newborn baby when divulging medical records to police.

16 2006. A likely reason to communicate false medical information about a mother and her
17 newborn baby in a statement to the police is to attempt to color Plaintiff Mrs. Smith as
18 an illegal methamphetamine user and that by extension her newborn baby as suffering
19 the deleterious effects of methamphetamine.

20 *Slander Per Se I(a)*

21 2007. The statement in police records as represented by Defendant Ms. Teresa
22 Marlino, MD, and ratified with the weight of her position, that Mrs. Smith, "...had a baby

1 born with marijuana and meth in her system...," harmed the reputation of Plaintiffs Mrs.
2 Smith and Newborn baby J.A.S. in the estimation of the community by stating that
3 Plaintiff Mrs. Smith ingested methamphetamines and that she and her son Plaintiff
4 Newborn baby J.A.S. were suffering the deleterious effects of the illegal and harmful
5 substance.

6 2008. The defamatory statement is harmful in character because it states that Plaintiff
7 Mrs. Smith has ingested the illegal and harmful substance of methamphetamine and
8 that she passed the deleterious harm of that ingestion onto her son Plaintiff Newborn
9 baby J.A.S.

10 2009. Defendant Ms. Teresa Marlino, MD, published the defamatory statement to at
11 least Officers Keyock and Smith of the Bethlehem Police Department where the
12 statements were heard by both officers.

13 2010. Upon information and belief, it can be demonstrated through Defendant
14 testimonies, examinations of police records, and hospital records, that recipients of the
15 publication understood that the meaning of the publication was that Plaintiff Mrs. Smith
16 had ingested illegal methamphetamine and passed that harm onto Plaintiff Newborn
17 baby J.A.S.

18 2011. Since Plaintiff Newborn baby J.A.S. is Plaintiff Mrs. Smith's baby, it was clear
19 that the defamatory statement was to be applied to both Plaintiffs Newborn baby J.A.S.
20 and Mrs. Smith.

21 2012. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
22 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
23 Luke's Hospital, and OBHG PA were aware of, causing a postpartum mother to

1 needlessly suffer by forcefully separating her from her newborn child, staff ratifying each
2 other's invalid moral positions leading other staff to regard their inappropriate actions
3 with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being considered
4 to suffer the deleterious effects of methamphetamine through his mother's use of illegal
5 drugs, by Defendants St. Luke's Hospital, and OBHG PA through their agent, employee,
6 or assign, Defendant Ms. Teresa Marlino, MD.

7 2013. Upon information and belief, Defendant St. Luke's Hospital, and OBHG PA,
8 through their agent, employee, or assign, Defendant Ms. Teresa Marlino, MD, abused
9 her conditionally privileged occasion when as a medical provider with the ability to
10 communicate information to state authorities in line with her duties as an agent,
11 employee, or assign of Defendant St. Luke's Hospital, and, OBHG PA did communicate
12 false medical records through the published defamatory statement.

13 2014. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
14 public figures.

15 2015. Since this is a case of a private figure plaintiff redressing issues of private
16 concern, the appropriate standard for this slander claim is one of negligence.

17 2016. Negligence: (1) Medical providers with the ability to communicate medical
18 records to state officials as a function of their assignor, employer, or agency are
19 required to communicate true and accurate records to those state officials.

20 2017. Negligence: (2) Medical provider Defendant Ms. Teresa Marlino, MD did not
21 communicate true and accurate medical records when she represented to police
22 officers Andrew Keyock and Thomas A. Smith of the Bethlehem Police Department that
23 Plaintiff Mrs. Smith, "...had a baby born with marijuana and meth in her system...."

1 2018. Negligence: (3) Upon information and belief, but for the actions of the Defendant
2 attesting to Plaintiff Mrs. Smith as having ingested methamphetamine, Plaintiff Mrs.
3 Smith would not have suffered the aforementioned harms and indignities mentioned
4 earlier in this allegation of slanderous defamation, as well, it is likely that Plaintiff Mrs.
5 Smith would not have had pervasive and injurious inquiries about private family matters
6 by state officials.

7 2019. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
8 Defendants' conduct, including but not limited to, emotional and psychological distress,
9 pain and suffering, and injury to their reputations.

10 2020. In *slander per se* cases Pennsylvania defamation law considers "Words that on
11 their face and without the aid of extrinsic evidence are recognized as injurious are
12 actionable per se...."¹⁴¹

13 2021. Upon information and belief, the Defendant Ms. Teresa Marlino, MD, directly and
14 unequivocally accused Plaintiff Mrs. Smith of having ingested methamphetamine and
15 she communicated that fact to Officers Andrew Keyock and Thomas A. Smith, which is
16 on its face and without the aid of extrinsic evidence injurious, and actionable for a
17 *slander per se* claim.

18 2022. In *slander pe se* cases, Pennsylvania law observes that, "words imputing a
19 criminal offense, loathsome disease, business misconduct or serious sexual
20 misconduct" will be considered defamatory per se.¹⁴²

¹⁴¹*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

¹⁴²*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 2023. Since Defendant Ms. Teresa Marlino, MD, directly and unequivocally accused
2 Plaintiff Mrs. Smith of having ingested methamphetamine to Officers Andrew Keyock
3 and Thomas A. Smith, and since methamphetamine is an illegal controlled substance,
4 the Defendant imputed a criminal offense, thereby making this an actionable *slander per*
5 *se* claim.

6 2024. Upon information and belief, Plaintiff can demonstrate by a preponderance of
7 evidence that the Defendants Private Entities St. Luke's Hospital, Onsite Neonatal, and,
8 OBHG PA, supervised Defendant Ms. Teresa Marlino, MD in connection with this
9 allegation and are therefore liable under a legal theory of respondeat superior.

10 2025. Upon information and belief, Defendants St. Luke's Hospital, and/or OBHG PA,
11 supervised Defendant Ms. Teresa Marlino, MD's conduct which violated Plaintiffs' rights
12 under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

13 *Or, In the Alternative,*

14 *Slander Per Quod I(b)*

15 2026. The statement in Bethlehem Police Department records as represented by
16 Defendant Ms. Teresa Marlino that Plaintiff Mrs. Smith, "...had a baby born with
17 marijuana and meth in her system...", harmed the reputation of Plaintiffs Mrs. Smith and
18 Newborn baby J.A.S. in the estimation of the community by representing that Plaintiff
19 Mrs. Smith had ingested methamphetamine and that she and her son Plaintiff Newborn
20 baby J.A.S. suffered the deleterious effects of an illegal and harmful substance.

1 2027. The defamatory statement is harmful in character because it states that Plaintiff
2 Mrs. Smith has ingested the illegal and harmful substance methamphetamine and that
3 she passed that harm onto her child Plaintiff Newborn baby J.A.S.

4 2028. Defendant Ms. Teresa Marlino, MD, published the defamatory statement to at
5 least Officers Keyock and Smith of the Bethlehem Police Department where the
6 statements were heard by both officers.

7 2029. Upon information and belief, it can be demonstrated through Defendant
8 testimonies, examinations of police records, and hospital records that recipients of the
9 publication understood that the meaning of the publication was that Plaintiff Mrs. Smith
10 had ingested illegal methamphetamine.

11 2030. Since Plaintiff Newborn baby J.A.S. is Plaintiff Mrs. Smith's baby, it was clear
12 that the defamatory statement was to be applied to both Plaintiffs Newborn baby J.A.S.
13 and Mrs. Smith.

14 2031. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
15 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
16 Luke's Hospital, and OBHG PA were aware of, causing a postpartum mother to
17 needlessly suffer by forcefully separating her from her newborn child, staff ratifying each
18 other's invalid moral positions leading other staff to regard their inappropriate actions
19 with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being considered
20 abused by his mother through her ingestion of illegal drugs, by St. Luke's Hospital, and
21 OBHG PA through their agent, employee, or assign, Defendant Ms. Teresa Marlino,
22 MD.

1 2032. Upon information and belief, St. Luke's Hospital, and OBHG PA, through their
2 agent, employee, or assign, Defendant Ms. Teresa Marlino, MD, abused her
3 conditionally privileged occasion when as a medical provider with the ability to
4 communicate information to state authorities in line with her duties as an agent,
5 employee, or assign of St. Luke's Hospital, and OBHG PA did falsify communicated
6 medical records through the published defamatory statement.

7 2033. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
8 public figures.

9 2034. Since this is a case of a private figure plaintiff redressing issues of private
10 concern, the appropriate standard for this libel claim is one of negligence.

11 2035. Negligence: (1) Medical providers with the ability to communicate medical
12 records to state officials as a function of their assignor, employer, or agency are
13 required to communicate true and accurate records to those state officials.

14 2036. Negligence: (2) Medical provider Ms. Teresa Marlino, MD did not communicate
15 true and accurate medical records when she represented to police officers Andrew
16 Keyock and Thomas A. Smith of the Bethlehem Police Department that Mrs. Smith,
17 "...had a baby born with marijuana and meth in her system...."

18 2037. Negligence: (3) Upon information and belief, but for the actions of the Defendant
19 attesting to Plaintiff Mrs. Smith as having ingested methamphetamine, Mrs. Smith would
20 not have suffered the aforementioned harms and indignities mentioned earlier in this
21 allegation of slanderous defamation, as well, it is likely that Mrs. Smith would not have
22 had pervasive and injurious inquiries about private family matters by state officials.

1 2038. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
2 Defendants' conduct, including but not limited to, emotional and psychological distress,
3 pain and suffering, and injury to their reputations.

4 2039. In *slander per quod* cases Pennsylvania defamation law considers extrinsic
5 supporting evidence of slanderous behavior if the injurious nature of the words is not
6 apparent.¹⁴³

7 2040. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
8 evidence that through the presentation of medical records, police reports, and other
9 administrative documentation that the statement was not a mere description of the baby
10 or his mother for the medical edification of potential diagnosis concerning Plaintiffs
11 Newborn baby J.A.S. or Mrs. Smith, but was instead a statement intended to cast
12 unfounded and harmful aspersions on both Plaintiffs Newborn baby J.A.S. and Mrs.
13 Smith.

14 2041. Plaintiffs will need to demonstrate necessary innuendo by Defendant Parties.

15 2042. "Innuendo", "define[s] the defamatory meaning which the plaintiff attaches to the
16 words" and "show[s] how they come to have that meaning and how they relate to the
17 plaintiff."¹⁴⁴

18 2043. Methamphetamine is an illegal controlled substance, which has deleterious
19 effects on those that consume it.

¹⁴³*Joseph*, 959 A.2d at n.23.

¹⁴⁴*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962)
(citations omitted).

1 2044. Deleterious effects caused by methamphetamine when consumed by a pregnant
2 mother will likely be passed on to her child in utero via the umbilical cord.

3 2045. When Defendant Ms. Teresa Marlino, MD, represented the statement, adding the
4 weight of the authority of her position to the narrative that Plaintiff Mrs. Smith ingested
5 methamphetamine and passed it along to her newborn baby, it was to make clear to
6 Officers Andrew Keyock and Thomas A. Smith that Plaintiff Mrs. Smith consumed
7 methamphetamine and that she likely passed on the deleterious effects of
8 methamphetamine use to her child Plaintiff Newborn baby J.A.S.

9 2046. The statement relates to the Plaintiffs Newborn baby J.A.S. and Mrs. Smith
10 because the statement is about Plaintiffs Mrs. Smith and Newborn baby J.A.S.

11 2047. Upon information and belief, Plaintiff can demonstrate by a preponderance of
12 evidence that the Defendants St. Luke's Hospital, and OBHG PA supervised Ms.
13 Teresa Marlino, MD in connection with this allegation and are therefore liable under a
14 legal theory of respondeat superior.

15 2048. Upon information and belief, Defendants St. Luke's Hospital, and/or OBHG PA,
16 supervised Defendant Ms. Teresa Marlino, MD's conduct which violated Plaintiffs' rights
17 under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

18 *Or, In the Alternative*

19 *Slander by Implication I(c)*

20 **The Slandorous Statement & Implication**

1 2049. Upon information and belief, Defendant Ms. Teresa Marlino, MD, supported the
2 hostile atmosphere intentionally created by St. Luke's Hospital, and OBHG PA against
3 the Plaintiff Smith Family.

4 2050. The statement in police records as represented by Defendant Ms. Teresa
5 Marlino, MD, and ratified with the weight of her position, that Mrs. Smith, "...had a baby
6 born with marijuana and meth in her system..." harmed the reputation of Plaintiffs Mrs.
7 Smith and Newborn baby J.A.S. in the estimation of the community by stating that
8 Plaintiff Mrs. Smith is a user of illegal of methamphetamines and that she and her
9 Plaintiff Newborn child J.A.S. were addicted to an illegal and harmful substance.

10 2051. Upon information and belief, Defendant Ms. Teresa Marlino, MD did verbalize to
11 Officers Andrew Keyock and Thomas A. Smith, the aforementioned statement as a
12 matter of facts.

13 2052. There is not a valid reason to communicate a mother's medical records for police
14 records.

15 2053. A likely reason to communicate medical information about a mother for police
16 records is to attempt to color Plaintiff Mrs. Smith as an illegal methamphetamine user
17 and that by extension her newborn baby suffers the deleterious effects of
18 methamphetamine.

19 2054. The statement in police records as communicated by Defendant Ms. Teresa
20 Marlino, MD, that Mrs. Smith, "...had a baby born with marijuana and meth in her
21 system..." harmed the reputation of Plaintiffs Mrs. Smith and newborn baby J.A.S. in
22 the estimation of the community by implying that Plaintiff Mrs. Smith is a user of illegal

1 of methamphetamines and that she and her son Plaintiff Newborn child J.A.S. suffered
2 from the deleterious effects of illegal and harmful substances.

3 2055. The defamatory statement is harmful in character because it implies that Plaintiff
4 Mrs. Smith has ingested the illegal and harmful substance of methamphetamine and
5 that she passed that harm onto her child Plaintiff Newborn baby J.A.S.

6 2056. Upon information and belief, Defendant Ms. Teresa Marlino, MD, published the
7 defamatory statement to at least Officers Keyock and Smith of the Bethlehem Police
8 Department where the statements were heard by both officers.

9 2057. Upon information and belief, it can be demonstrated through Defendant
10 testimonies, examinations of police records, and hospital policies, that the recipient of
11 the publication understood that the meaning of the publication was that Plaintiff Mrs.
12 Smith had ingested illegal methamphetamine.

13 2058. Since Plaintiff Newborn baby J.A.S. is Mrs. Smith's baby, it was clear that the
14 defamatory statement was to be applied to both Plaintiffs Newborn baby J.A.S. and Mrs.
15 Smith.

16 2059. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
17 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
18 Luke's Hospital, and OBHG PA were aware of, causing a postpartum mother to
19 needlessly suffer by forcefully separating her from her newborn child, staff ratifying each
20 other's invalid moral positions leading other staff to regard their inappropriate actions
21 with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being considered
22 abused by his mother through her ingestion of illegal drugs, by Defendants St. Luke's

1 Hospital, and OBHG PA through their agent, employee, or assign, Ms. Teresa Marlino,
2 MD.

3 2060. Upon information and belief, Defendants St. Luke's Hospital, and OBHG PA,
4 through their agent, employee, or assign, Defendant Ms. Teresa Marlino, MD, abused
5 her conditionally privileged occasion when as a medical provider with the ability to
6 communicate information to state authorities in line with her duties as an agent,
7 employee, or assign of Defendants St. Luke's Hospital, and OBHG PA did falsify
8 communicated medical records through the published defamatory statement.

9 2061. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
10 public figures.

11 2062. Since this is a case of a private figure plaintiff redressing issues of private
12 concern, the appropriate standard for this libel claim is one of negligence.

13 2063. Negligence: (1) Medical providers with the ability to communicate medical
14 records to state officials as a function of their assignor, employer, or agency are
15 required to communicate true and accurate records to those state officials.

16 2064. Negligence: (2) Medical provider Defendant Ms. Teresa Marlino, MD did not
17 communicate true and accurate medical records when she represented to police
18 officers Andrew Keyock and Thomas A. Smith of the Bethlehem Police Department that
19 Mrs. Smith, "...had a baby born with marijuana and meth in her system...."

20 2065. Negligence: (3) Upon information and belief, but for the actions of the Defendant
21 implying that Plaintiff Mrs. Smith ingested methamphetamine, Plaintiff Mrs. Smith would
22 not have suffered the aforementioned harms and indignities mentioned earlier in this
23 allegation of slanderous defamation, as well, it is likely that Plaintiff Mrs. Smith would

1 not have had pervasive and injurious inquiries about private family matters by state
2 officials.

3 2066. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
4 Defendant's conduct, including but not limited to, emotional and psychological distress,
5 pain and suffering, and injury to their reputations.

6 2067. Libel by Implication occurs when "true facts that in context imply a falsehood."¹⁴⁵

7 2068. In addition, "the literal accuracy of separate statements will not render a
8 communication 'true' where, as here, the implication of the communication as a whole
9 was false."¹⁴⁶

10 2069. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
11 demonstrate by a preponderance of the evidence that any one communicated
12 statement in police records may be true, but the implication of the communications as a
13 whole in the police records is false.

14 2070. While it may be literally true that Plaintiff Mrs. Smith was factually accused of
15 methamphetamine consumption; when placed in context of medical records and witness
16 testimonials it is clear that Plaintiffs Mrs. Smith and Newborn baby J.A.S. did not have
17 any methamphetamine in their systems.

¹⁴⁵*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

¹⁴⁶*Id.* at 493.

1 2071. As well, if “the defendant juxtaposes [a] series of fact so as to imply a defamatory
2 connection between them, or [otherwise] creates a defamatory implication...” then a
3 slanderous statement by implication is present.¹⁴⁷

4 2072. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
5 demonstrate by a preponderance of the evidence that many facts contained within
6 police records juxtapose a series of facts so as to imply a defamatory connection of
7 methamphetamine ingestion by Plaintiff Mrs. Smith, the deleterious effects of which
8 were passed on to Plaintiff Newborn baby J.A.S.

9 2073. Upon information and belief, Plaintiff can demonstrate by a preponderance of
10 evidence that the Defendants St. Luke’s Hospital, and OBHG PA supervised Defendant
11 Ms. Teresa Marlino, MD in connection with this allegation and are therefore liable under
12 a legal theory of respondeat superior.

13 2074. Upon information and belief, Defendants St. Luke’s Hospital, and/or OBHG PA,
14 supervised Defendant Ms. Teresa Marlino, MD’s conduct which violated Plaintiffs’ rights
15 under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

16 **Damages for Slander I(a-c)**

17 2075. Plaintiff Mr. Smith suffered substantial harm as a result of Defendants’ conduct,
18 including but not limited to, emotional and psychological distress, pain and suffering,
19 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
20 compensatory damages to account for PTSD therapies and other related treatments as

¹⁴⁷ *Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 they have been and will continue to be necessary; Plaintiffs respectfully request an
2 amount of \$595,000 in compensatory damages per Defendant.

3 2076. Given the substantial wealth of the Defendants St. Luke's Hospital, OBHG PA,
4 and Ms. Teresa Marlino, MD and therefore, their ability to afford the appropriate training
5 to avoid this egregious violation of the Pennsylvania Statutory Law, and, since harm
6 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
7 continue to harm future postpartum families, and because the acts of the Defendants
8 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
9 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
10 punitive damages on Defendants St. Luke's Hospital, OBHG PA, and Ms. Teresa
11 Marlino, MD to deter such Defendants from committing to such conduct in the future
12 which violates Commonwealth of Pennsylvania Statutory Law Plaintiffs respectfully
13 request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's
14 Hospital, OBHG PA, and Ms. Teresa Marlino, MD..

15 2077. In the unlikely event that the jury does not find that Plaintiffs Mrs. Smith and
16 Newborn baby J.A.S. suffered any actual injury despite the deprivation of their statutory
17 law rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

18 **XXX. § 42 Pa. C. S. § 8343, Defamation - Slander II**

19 **Mr. Michael O. Smith v. St. Luke's Hospital, OBHG PA, & Ms. Teresa Marlino, MD**

20 2078. Under Pennsylvania defamation law, a communication will be considered
21 defamatory if it ""tends so to harm the reputation of [the complaining party] as to lower

him in the estimation of the community or to deter third persons from associating or dealing with him.”¹⁴⁸

2079. In order for Plaintiffs to succeed in their claim, they must prove the following elements¹⁴⁹:

- (1) The defamatory character of the communication;
- (2) Its publication by the defendant;
- (3) Its application to the plaintiff;
- (4) The understanding by the recipient of its defamatory meaning;
- (5) The understanding by the recipient of it as intended to be applied to the plaintiff;
- (6) Special harm resulting to the plaintiff from its publication; and
- (7) Abuse of a conditionally privileged occasion.

2080. The Pennsylvania Supreme Court has abolished an “actual malice” standard and has shifted the inquiry to whether a plaintiff is a private individual or a public figure or public official.¹⁵⁰

¹⁴⁸*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

¹⁴⁹42 Pa.C.S. § 8343(a)(1-7).

¹⁵⁰*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the plaintiff can lead to wider array of potential damages.

1 2081. Pennsylvania has adopted a negligence standard for private figure plaintiff
2 lawsuits regarding issues of private concern.¹⁵¹

3 2082. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
4 or obligation recognized by the law, requiring the actor to conform to a certain standard
5 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
6 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
7 the interests of another.¹⁵²

8 **The Context**

9 2083. Defendants St. Luke's Hospital, and OBHG PA, among other parties named and
10 unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
11 Family, including Plaintiff Mr. Smith.

12 2084. Defendant Ms. Teresa Marlino, MD, supported the hostile atmosphere
13 intentionally created by Defendants St. Luke's Hospital and OBHG PA.

14 2085. Defendants St. Luke's Hospital, and OBHG, coordinated their employee, agent,
15 or assign, Defendant Ms. Teresa Marlino, MD, towards a narrative that Mrs. Smith had
16 ingested methamphetamine and that Mrs. Smith gave birth to Newborn baby J.A.S. who
17 also suffered the deleterious effects of methamphetamine.

¹⁵¹ *Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

¹⁵² *See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2086. The umbilical cord that connected Newborn baby J.A.S. and Mrs. Smith was
2 tested on April 9th, 2021, and was negative for amphetamines and methamphetamines.

3 2087. Despite the umbilical cord that connected Newborn baby J.A.S. and Mrs. Smith
4 testing negative for illegal drugs, Defendants St. Luke's Hospital and OBHG PA, acting
5 through agent, employee, or assign Defendant Ms. Teresa Marlino, MD, continued the
6 narrative that Mrs. Smith had ingested methamphetamine and that Mrs. Smith gave
7 birth to Newborn baby J.A.S. who also suffered the deleterious effects of
8 methamphetamine addict.

9 2088. Medical records on April 9th, 2021, reflect the statement, "[F]amily was requesting
10 discharge at 12 hours of life."

11 2089. Mr. and Mrs. Smith requested at approximately 12-hours of Newborn baby
12 J.A.S.'s life that the Smith Family be discharged from Defendant St. Luke's Hospital
13 when practicable, not immediately at 12 hours from birth, as is suggested in the medical
14 records entered by Defendant St. Luke's Hospital agents, employees, and/or assigns.

15 2090. Defendants St. Luke's Hospital, and OBHG PA, through their agents, employees,
16 or assigns, was further attempting to imply that Mrs. Smith was urgently seeking to go
17 home so that she could consume methamphetamine by making the medical records
18 appear that Mrs. Smith sought to reingest methamphetamine by going home as soon as
19 possible after her newborn baby's birth.

20 2091. Beginning on April 10th, 2021 the statement, "High probability of life[-]threatening
21 clinical deterioration in infant's condition without treatment," began regularly appearing
22 in medical records.

1 2092. Mr. and Mrs. Smith were not ever told by any agent, employee, or assign of
2 Defendants St. Luke's Hospital or OBHG PA that Newborn baby J.A.S. had a, "High
3 probability of life[-]threatening clinical deterioration...without treatment."

4 2093. Despite the accusation of methamphetamine ingestion by Defendants St. Luke's
5 Hospital, and OBHG PA and their agents, assigns, or employees, Mrs. Smith was
6 allowed to breastfeed Newborn baby J.A.S.

7 2094. Despite Plaintiffs Mrs. Smith and Newborn baby J.A.S. being suspected of
8 suffering the deleterious effects of methamphetamine, state mandated policies and
9 procedures for methamphetamine withdrawal were not implemented for Newborn baby
10 J.A.S. by Defendants St. Luke's Hospital, OBHG PA, nor any other health provider.

11 2095. Notes on medical records by non-radiology experts from April 11th, 2021, stated
12 that, "...upon admission to the NICU [newborn baby J.A.S.] showed hazy lung fields
13 with expansion to 5-9 ribs."

14 2096. Radiology indicates in the medical record no "hazy lung fields" or "expansion"
15 into Newborn baby J.A.S.'s lungs.

16 2097. Radiology, instead indicates in the medical record, "Perhaps minimal asymmetric
17 granular opacity on the right. No consolidation. No discernable pneumothorax or
18 layering pleural effusion on limited supine imaging. Osseous structures appear within
19 normal limits for patient age."

20 2098. Upon information and belief, Defendants St. Luke's Hospital, and OBHG PA, and
21 other parties named and unnamed in this lawsuit, manipulated the medical records in
22 their own interpretations of the radiologist's report to paint Newborn baby J.A.S. and
23 Mrs. Smith as suffering the deleterious effects of methamphetamine ingestion by

1 constructing a reason to keep newborn baby J.A.S. in the hospital against the will and
2 consent of his parents.

3 2099. As represented in the medical documentation, beginning on April 10th, 2021, Mrs.
4 Smith was under constant monitoring by all Defendant St. Luke's Hospital and OBHG
5 PA for "inappropriate behavior" via their agents, employees, and/or assigns.

6 2100. As of April 9th, 2021, Plaintiff Mr. Smith was not allowed to ever be on Defendant
7 St. Luke's Hospital Property at the consequence of being arrested.

8 2101. As of April 10th, 2021, Mrs. Smith was supervised around the clock by male
9 security guards, even while breastfeeding, and walking to the restroom.

10 2102. On the evening of April 9th, 2021, after Mr. & Mrs. Smith were ejected from
11 Defendant St. Luke's Hospital's property, Officer Andrew Keyock, created a police
12 report based on the removal incident from Defendant St. Luke's Hospital.

13 2103. The police report titled, "DISTURBANCE -UNWANTED PERSON" written by
14 Officer Keyock, is in-part, as follows:

15 "Grace Smith (32) and Michael Smith (38) became
16 upset and wanted to leave with their child. I explained the
17 situation to both parents as presented to this officer and I
18 had Dr. Marlino communicate the information directly as
19 well.

20 Grace Smith was then discharged from the hospital and
21 notified to contact Children and Youth Monroe County for
22 further determination. The Smiths were then escorted from
23 the property and provided with a defiant trespass warning."

1 2104. Upon information and belief, Defendant Ms. Teresa Marlino, MD participated in
2 and approved of a false narrative concerning Plaintiff Mr. Michael O. Smith, that Plaintiff
3 Mr. Smith was in some way too dangerous or violent to be allowed to visit his son,
4 Newborn baby J.A.S., on Defendant St. Luke's Hospital's property.

5 **The Slanderous Statement**

6 2105. Upon information and belief, Defendant Ms. Teresa Marlino, MD supported the
7 hostile atmosphere intentionally created by Defendants St. Luke's Hospital, and OBHG
8 PA, against the Plaintiff Smith Family.

9 2106. Defendant Ms. Teresa Marlino, MD, on April 9th, 2021, verbally communicated
10 statements to officers of the Bethlehem Police Department that Plaintiff Mr. Smith is a
11 character of such violence that he should be forcefully separated from his newborn baby
12 child who was in the N.I.C.U.

13 2107. Plaintiff Mr. Smith did not ever exceed the bounds of reasonable civil discourse,
14 did not vocalize what a reasonable person would call "curse words", nor did any verbal
15 espousals by Plaintiff Mr. Smith appeal to a prurient interest.

16 2108. Upon information and belief, Defendant Ms. Teresa Marlino, MD, supported the
17 false narrative created about Plaintiff Mr. Smith that Mr. Smith acted in a manner
18 befitting a no trespass order by the local police department.

19 2109. Upon information and belief, there was not any valid reason to verbally
20 communicate to local police officers that Plaintiff Mr. Smith conducted himself in a
21 manner that befit his removal from Defendant St. Luke's Hospital property under threat
22 of arrest.

1 2110. There is not any reasonable information in the police report stating why Plaintiff
2 Mr. Smith's conduct led to his removal from Defendant St. Luke's Hospital property, yet
3 he was removed.

4 2111. A likely reason to not place alleged personality traits and misconduct in the police
5 report about Plaintiff Mr. Smith which led to his separation from his newborn baby is
6 because Plaintiff Mr. Smith's personality traits and conduct were appropriate for the
7 situation.

8 *Slander Per Se II(a)*

9 2112. The statements as communicated by Defendant Ms. Teresa Marlino, MD, that
10 Plaintiff Mr. Smith acted in a manner befitting forceful removal from Defendant St.
11 Luke's Hospital property harmed the reputation of Plaintiff Mr. Smith in the estimation of
12 the community by stating that Plaintiff Mr. Smith is an individual of criminal caliber, and
13 that he acted in a manner befitting a no trespassing order from the Bethlehem Police
14 Department.

15 2113. The defamatory statement is harmful in character because it states that Plaintiff
16 Mr. Smith, at the behest of Defendants St. Luke's Hospital, and OBHG PA, is a person
17 capable of such violence that he cannot be permitted on Defendant St. Luke's Hospital
18 property to visit with his newborn baby child in the N.I.C.U.

19 2114. Defendant Ms. Teresa Marlino, MD, published the defamatory statement to at
20 least Officers Keyock and Smith of the Bethlehem Police Department where the
21 statements were heard by both officers.

1 2115. Upon information and belief, it can be demonstrated through Defendant
2 testimonies, examinations of medical records, and hospital policies that recipient of the
3 publication understood that the meaning of the publication was that Plaintiff Mr. Smith
4 may attempt to violently infiltrate the NICU at Defendant St. Luke's Hospital to recover
5 his child.

6 2116. Since Newborn baby J.A.S. is Plaintiff Mr. Smith's baby and because Plaintiff Mr.
7 Smith is directly referenced in the police report, it was clear that the defamatory
8 statement was to be applied to Plaintiff Mr. Smith.

9 2117. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
10 exacerbating Plaintiff's mental health condition, causing a postpartum father to
11 needlessly suffer without his newborn baby child who was in neonatal intensive care,
12 staff ratifying each other's invalid moral positions leading other staff to regard their
13 inappropriate actions with a sense of false righteousness, and a baseless reputation for
14 violent behavior, by Defendants St. Luke's Hospital, and OBHG PA through their agent,
15 employee, or assign, Defendant Ms. Teresa Marlino, MD.

16 2118. Upon information and belief, Defendants St. Luke's Hospital, and OBHG PA,
17 through their agent, employee, or assign, Defendant Ms. Teresa Marlino, MD, abused
18 her conditionally privileged occasion when as a medical provider with the ability to
19 communicate information to state authorities in line with her duties as an agent,
20 employee, or assign of Defendants St. Luke's Hospital, and OBHG PA did falsely
21 represent Plaintiff Mr. Smith as an individual acting in a manner befitting of being
22 removed from Defendant St. Luke's Hospital property while his newborn baby is in the
23 N.I.C.U. against his will.

1 2119. Plaintiff Mr. Smith is a private individual and not a public figure.

2 2120. Since this is a case of a private figure plaintiff redressing issues of private
3 concern, the appropriate standard for this libel claim is one of negligence.

4 2121. Negligence: (1) Medical providers with the ability to communicate medical
5 records to state officials as a function of their assignor, employer, or agency are
6 required to communicate true and accurate records to those state officials.

7 2122. Negligence: (2) Medical provider Defendant Ms. Teresa Marlino, MD did not
8 communicate true and accurate representations when she verbally communicated to
9 Officers Andrew Keyock and Thomas A. Smith of the Bethlehem Police Department that
10 Plaintiff Mr. Smith acted in a manner befitting his immediate removal from Defendant St.
11 Luke's Hospital property under police escort.

12 2123. Negligence: (3) Upon information and belief, but for the actions of the Defendant
13 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
14 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
15 earlier in this allegation of slanderous defamation, as well, it is possible that Plaintiff Mr.
16 Smith would not have had pervasive and injurious inquiries about private family matters
17 by state officials.

18 2124. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
19 conduct, including but not limited to, emotional and psychological distress, pain and
20 suffering, and injury to his reputation.

1 2125. In *slander per se* cases Pennsylvania defamation law considers “Words that on
2 their face and without the aid of extrinsic evidence are recognized as injurious are
3 actionable per se....”¹⁵³

4 2126. Upon information and belief, Defendants’ directly and unequivocally accused
5 Plaintiff Mr. Smith of being an individual violent enough that a no trespass order was
6 appropriate for his character, are accusations which on their face and without the aid of
7 extrinsic evidence injurious, and actionable for a *slander per se* claim.

8 2127. In *slander pe se* cases, Pennsylvania law observes that, “words imputing a
9 criminal offense, loathsome disease, business misconduct or serious sexual
10 misconduct” will be considered defamatory per se.¹⁵⁴

11 2128. Since Defendants’ directly and unequivocally accused Plaintiff Mr. Smith of
12 having the characteristics of a trespasser, and thereby a criminal, in his newborn child’s
13 medical records, and since trespassing is an act violating the law, as was conveyed to
14 Plaintiff Mr. Smith by Officer Andrew Keyock, thereby making this an actionable *slander*
15 *per se* claim.

16 2129. Upon information and belief, Plaintiff can demonstrate by a preponderance of
17 evidence that the Defendants St. Luke’s Hospital, and OBHG PA supervised Defendant
18 Ms. Teresa Marlino, MD, in connection with this allegation and are therefore liable under
19 a legal theory of respondeat superior.

¹⁵³*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

¹⁵⁴*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 2130. Upon information and belief, Defendants St. Luke's Hospital, and/or OBHG PA,
2 supervised Defendant Ms. Teresa Marlino, MD's conduct which violated Plaintiffs' rights
3 under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

4 *Or, In the Alternative,*

5 *Slander Per Quod II(b)*

6 2131. The statements as communicated by Defendant Ms. Teresa Marlino, MD, that
7 Plaintiff Mr. Smith acted in a manner befitting forceful removal from Defendant St.
8 Luke's Hospital property against his will harmed the reputation of Plaintiff Mr. Smith in
9 the estimation of the community by stating that Plaintiff Mr. Smith is an individual of
10 criminal caliber, and that he acted in a manner befitting a no trespassing order from the
11 Bethlehem Police Department.

12 2132. The defamatory statement is harmful in character because it states that Plaintiff
13 Mr. Smith, at the behest of Defendants St. Luke's Hospital, and OBHG PA, is a person
14 capable of such violence that he cannot be permitted on Defendant St. Luke's Hospital
15 property to visit with his newborn baby in the N.I.C.U.

16 2133. Defendant Ms. Teresa Marlino, MD, published the defamatory statement to at
17 least Officers Keyock and Smith of the Bethlehem Police Department where the
18 statements were heard by both officers.

19 2134. Upon information and belief, it can be demonstrated through Defendant
20 testimonies, examinations of medical records, and hospital policies that recipient of the
21 publication understood that the meaning of the publication was that Plaintiff Mr. Smith

1 may attempt to violently infiltrate the NICU at Defendant St. Luke's Hospital to recover
2 his child.

3 2135. Since Newborn baby J.A.S. is Plaintiff Mr. Smith's baby and because Plaintiff Mr.
4 Smith is directly referenced in the police report, it was clear that the defamatory
5 statement was to be applied to Plaintiff Mr. Smith.

6 2136. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
7 exacerbating Plaintiff's mental health condition, causing a postpartum father to
8 needlessly suffer without his newborn baby child who was in neonatal intensive care,
9 staff ratifying each other's invalid moral positions leading other staff to regard their
10 inappropriate actions with a sense of false righteousness, and a baseless reputation for
11 violent behavior, by Defendants St. Luke's Hospital, and OBHG PA through their agent,
12 employee, or assign, Defendant Ms. Teresa Marlino, MD.

13 2137. Upon information and belief, Defendants St. Luke's Hospital, and OBHG, PA
14 through their agent, employee, or assign, Defendant Ms. Teresa Marlino, MD, abused
15 her conditionally privileged occasion when as a medical provider with the ability to
16 communicate information to state authorities in line with her duties as an agent,
17 employee, or assign of Defendants St. Luke's Hospital, and OBHG PA did falsely
18 represent Plaintiff Mr. Smith as an individual acting in a manner befitting of being
19 removed from Defendant St. Luke's Hospital property against his will while his newborn
20 baby child is in the N.I.C.U.

21 2138. Plaintiff Mr. Smith is a private individual and not a public figure.

22 2139. Since this is a case of a private figure plaintiff redressing issues of private
23 concern, the appropriate standard for this slander claim is one of negligence.

1 2140. Negligence: (1) Medical providers with the ability to communicate medical
2 records to state officials as a function of their assignor, employer, or agency are
3 required to communicate true and accurate records to those state officials.

4 2141. Negligence: (2) Medical provider Defendant Ms. Teresa Marlino, MD did not
5 communicate true and accurate representations when she verbally communicated to
6 Officers Andrew Keyock and Thomas A. Smith of the Bethlehem Police Department that
7 Plaintiff Mr. Smith acted in a manner befitting his immediate removal from Defendant St.
8 Luke's Hospital property under police escort.

9 2142. Negligence: (3) Upon information and belief, but for the actions of the Defendant
10 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
11 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
12 earlier in this allegation of slanderous defamation, as well, it is possible that Plaintiff Mr.
13 Smith would not have had pervasive and injurious inquiries about private family matters
14 by state officials.

15 2143. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
16 conduct, including but not limited to, emotional and psychological distress, pain and
17 suffering, and injury to his reputation.

18 2144. In *slander per quod* cases Pennsylvania defamation law considers extrinsic
19 supporting evidence of slanderous behavior if the injurious nature of the words is not
20 apparent.¹⁵⁵

¹⁵⁵Joseph, 959 A.2d at n.23.

1 2145. Upon information and belief, Plaintiff can demonstrate by a preponderance of
2 evidence that through the presentation of witness testimonials, medical records, police
3 reports, and other administrative documentation that the statement was a statement
4 intended to cast unfounded and harmful aspersions on Plaintiff Mr. Smith.

5 2146. Plaintiff will need to demonstrate necessary innuendo by Defendant Parties.

6 2147. “Innuendo”, “define[s] the defamatory meaning which the plaintiff attaches to the
7 words” and “show[s] how they come to have that meaning and how they relate to the
8 plaintiff.”¹⁵⁶

9 2148. A ‘no trespass’ order is not supposed to be contrived without meaning and
10 therefore carries with it the implied weight of violence if such a person were to trespass.

11 2149. When Defendant Ms. Teresa Marlino, MD communicated the false statements
12 with the weight and authority of her position it was to make clear to Officers Andrew
13 Keyock and Thomas A. Smith, that Plaintiff Mr. Smith is a person of violent nature who
14 cannot be around his newborn baby child or hospital personnel.

15 2150. The statement relates to Plaintiff Mr. Smith because the statement is about the
16 father of the newborn child, Plaintiff Mr. Smith.

17 2151. Upon information and belief, Plaintiff can demonstrate by a preponderance of
18 evidence that the Defendants St. Luke’s Hospital, and OBHG PA supervised Defendant
19 Ms. Teresa Marlino, MD, in connection with this allegation and are therefore liable under
20 a legal theory of respondeat superior.

¹⁵⁶*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962)

(citations omitted).

1 2152. Upon information and belief, Defendants St. Luke's Hospital, and/or OBHG PA,
2 supervised Defendant Ms. Teresa Marlino, MD's conduct which violated Plaintiffs' rights
3 under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

4 *Or, In the Alternative*

5 *Slander by Implication II(c)*

6 2153. The statements as communicated by Defendant Ms. Teresa Marlino, MD, that
7 Plaintiff Mr. Smith acted in a manner befitting removal from St. Luke's Hospital property
8 against his will harmed the reputation of Plaintiff Mr. Smith in the estimation of the
9 community by stating that Plaintiff Mr. Smith is an individual of criminal caliber, and that
10 he acted in a manner befitting a no trespassing order from the Bethlehem Police
11 Department.

12 2154. Defendant Ms. Teresa Marlino, MD did verbalize to Officers Andrew Keyock and
13 Thomas A. Smith the aforementioned statement as a matter of facts.

14 2155. The defamatory statement is harmful in character because it implies that Plaintiff
15 Mr. Smith, at the behest of Defendants St. Luke's Hospital, and OBHG PA, is a person
16 capable of such violence that he cannot be permitted on Defendant St. Luke's Hospital
17 property to visit with his newborn baby child in the N.I.C.U.

18 2156. Defendant Ms. Teresa Marlino, MD, published the defamatory statement to at
19 least Officers Keyock and Smith of the Bethlehem Police Department where the
20 statements were heard by both officers.

21 2157. Upon information and belief, it can be demonstrated through Defendant
22 testimonies, examinations of police records, and hospital policies, such as, ejection from

1 Defendant St. Luke's Hospital property under threat of arrest for defiant trespass, that
2 recipients of the publication understood that the meaning of the publication was that
3 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke's
4 Hospital to recover his child.

5 2158. Since Newborn baby J.A.S. is Plaintiff Mr. Smith's baby, it was clear that the
6 defamatory statement was to be applied to Plaintiff Mr. Smith.

7 2159. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
8 exacerbating Plaintiff's mental health condition, causing a postpartum father to
9 needlessly suffer without his newborn baby child who was in neonatal intensive care,
10 staff ratifying each other's invalid moral positions leading other staff to regard their
11 inappropriate actions with a sense of false righteousness, and a baseless reputation for
12 violent behavior, by Defendants St. Luke's Hospital, and OBHG PA through their agent,
13 employee, or assign, Defendant Ms. Teresa Marlino, MD.

14 2160. Upon information and belief, Defendants St. Luke's Hospital, and OBHG PA,
15 through their agent, employee, or assign, Defendant Ms. Teresa Marlino, MD, abused
16 her conditionally privileged occasion when as a medical provider with the ability to
17 communicate information to state authorities in line with her duties as an agent,
18 employee, or assign of Defendants St. Luke's Hospital, and OBHG PA did falsely
19 represent Plaintiff Mr. Smith as an individual acting in a manner befitting of being
20 removed from Defendant St. Luke's Hospital property against his will while his newborn
21 baby child is in the N.I.C.U.

22 2161. Plaintiff Mr. Smith is a private individual and not a public figure.

1 2162. Since this is a case of a private figure plaintiff redressing issues of private
2 concern, the appropriate standard for this libel claim is one of negligence.

3 2163. Negligence: (1) Medical providers with the ability to communicate medical
4 records as a function of their assignor, employer, or agency are required to maintain
5 medical records that reflect the truth of a matter in both itemized mentions of fact and
6 the totality of what those facts are to represent.

7 2164. Negligence: (2) Medical provider Defendant Ms. Teresa Marlino, MD, did
8 maintain true and accurate medical records when itemized mentions of fact were
9 spoken in isolation from one another; however, when taken as a totality the facts
10 present the Plaintiffs in a harmful and dishonest light, culminating with when Defendant
11 Ms. Teresa Marlino, MD, represented to Officers Andrew Keyock and Thomas A. Smith
12 that Plaintiff Mr. Smith was an individual whose character and actions warranted
13 immediate removal from Defendant St. Luke's Hospital property.

14 2165. Negligence: (3) Upon information and belief, but for the actions of the Defendant
15 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
16 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
17 earlier in this allegation of slanderous defamation, as well, it is possible that Plaintiff Mr.
18 Smith would not have had pervasive and injurious inquiries about private family matters
19 by state officials.

20 2166. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
21 conduct, including but not limited to, emotional and psychological distress, pain and
22 suffering, and injury to his reputation.

1 2167. Upon information and belief, Plaintiff can demonstrate by a preponderance of
2 evidence that through the presentation of medical records, police reports, and other
3 administrative documentation that the statement was intended to cast unfounded and
4 harmful aspersions on Plaintiff Mr. Smith.

5 2168. Slander by Implication occurs when “true facts that in context imply a
6 falsehood.”¹⁵⁷

7 2169. In addition, “the literal accuracy of separate statements will not render a
8 communication ‘true’ where, as here, the implication of the communication as a whole
9 was false.”¹⁵⁸

10 2170. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
11 preponderance of the evidence that any one statement verbally conveyed to Officers
12 Andrew Keyock and Thomas A. Smith may be true, but the implication of the
13 communications as a whole is false.

14 2171. As well, if “the defendant juxtaposes [a] series of fact so as to imply a defamatory
15 connection between them, or [otherwise] creates a defamatory implication...” then a
16 slanderous statement by implication is present.¹⁵⁹

17 2172. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
18 preponderance of the evidence that facts contained within medical and administrative

¹⁵⁷*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

¹⁵⁸*Id.* at 493.

¹⁵⁹*Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 records juxtaposes a series of facts so as to imply a defamatory connection of violent
2 predilections by Plaintiff Mr. Smith.

3 2173. Although it may be literally true that, Defendant Ms. Teresa Marlino, MD stated
4 that Plaintiff Mr. Smith used offensive language and planned on taking baby from NICU,
5 such a statement erroneously implies that Plaintiff Mr. Smith is a man of violent nature
6 who planned on recovering his child from Defendant St. Luke's Hospital by whatever
7 means necessary; however, in fact, any language can be considered 'offensive' when
8 the recipient of that language does not desire to hear such language, and if Plaintiff Mr.
9 Smith "planned on taking the baby from [the] NICU" it was through the proper hospital
10 discharge procedures and not via any means of force or violence.

11 2174. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
12 preponderance of evidence that the Defendants St. Luke's Hospital, and OBHG PA
13 supervised Defendant Ms. Teresa Marlino, MD, in connection with this allegation and
14 are therefore liable under a legal theory of respondeat superior.

15 2175. Upon information and belief, Defendants St. Luke's Hospital, and/or OBHG PA,
16 supervised Defendant Ms. Teresa Marlino, MD's conduct which violated Plaintiffs' rights
17 under Pennsylvania Statute *42 Pa. C.S. § 8343* for defamation.

18 **Damages for Slander II(a-c)**

19 2176. Plaintiff Mr. Smith suffered substantial harm as a result of Defendants' conduct,
20 including but not limited to, emotional and psychological distress, pain and suffering,
21 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
22 compensatory damages to account for PTSD therapies and other related treatments as

1 they have been and will continue to be necessary; Plaintiff respectfully requests an
 2 amount of \$595,000 in compensatory damages per Defendant.

3 2177. Given the substantial wealth of the Defendants St. Luke's Hospital, OBHG PA,
 4 and Ms. Teresa Marlino, MD, and therefore, their ability to afford the appropriate training
 5 to avoid this egregious violation of the Pennsylvania Statutory Law, and, since harm
 6 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
 7 continue to harm future postpartum families, and because the acts of the Defendants
 8 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
 9 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
 10 punitive damages on Defendants St. Luke's Hospital, OBHG PA, and Ms. Teresa
 11 Marlino, MD to deter such Defendants from committing to such conduct in the future
 12 which violates Commonwealth of Pennsylvania Statutory Law Plaintiffs respectfully
 13 request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's
 14 Hospital, OBHG PA, and Ms. Teresa Marlino, MD.

15 2178. In the unlikely event that the jury does not find that Plaintiff Mr. Smith suffered
 16 any actual injury despite the deprivation of their statutory law rights, the Plaintiff
 17 respectfully requests a nominal judgment of \$1.00.

18 **XXXI. § 42 Pa. C. S. § 8343, Defamation - Slander III**

19 Newborn baby J.A.S. and Mrs. Grace Smith v. St. Luke's Hospital, Onsite Neonatal,

20 & Ms. Cynthia Shultz, MD

21 2179. Under Pennsylvania defamation law, a communication will be considered
 22 defamatory if it ""tends so to harm the reputation of [the complaining party] as to lower

1 him in the estimation of the community or to deter third persons from associating or
2 dealing with him.”¹⁶⁰

3 2180. In order for Plaintiffs to succeed in their claim, they must prove the following
4 elements¹⁶¹:

- 5 (1) The defamatory character of the communication;
- 6 (2) Its publication by the defendant;
- 7 (3) Its application to the plaintiff;
- 8 (4) The understanding by the recipient of its defamatory meaning;
- 9 (5) The understanding by the recipient of it as intended to be applied to the plaintiff;
- 10 (6) Special harm resulting to the plaintiff from its publication; and
- 11 (7) Abuse of a conditionally privileged occasion.

12 2181. The Pennsylvania Supreme Court has abolished an “actual malice” standard and
13 has shifted the inquiry to whether a plaintiff is a private individual or a public figure or
14 public official.¹⁶²

¹⁶⁰*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

¹⁶¹42 Pa.C.S. § 8343(a)(1-7).

¹⁶²*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the plaintiff can lead to wider array of potential damages.

1 2182. Pennsylvania has adopted a negligence standard for private figure plaintiff
2 lawsuits regarding issues of private concern.¹⁶³

3 2183. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
4 or obligation recognized by the law, requiring the actor to conform to a certain standard
5 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
6 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
7 the interests of another.¹⁶⁴

8 **The Context**

9 2184. Defendants St. Luke's Hospital and Onsite Neonatal, among other parties named
10 and unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
11 Family, including Plaintiffs Newborn baby J.A.S. and Mrs. Smith.

12 2185. Upon information and belief, Defendant Ms. Cynthia Shultz, MD, supported the
13 hostile atmosphere intentionally created by Defendants St. Luke's Hospital and Onsite
14 Neonatal.

15 2186. Defendants St. Luke's Hospital, and Onsite Neonatal coordinated their employee,
16 agent, or assign, including Defendant Ms. Cynthia Shultz, MD, towards a narrative that
17 Plaintiff Mrs. Smith had ingested methamphetamine and that Plaintiff Mrs. Smith gave

¹⁶³*Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

¹⁶⁴*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 birth to Plaintiff Newborn baby J.A.S. who also suffered the deleterious effects of
2 methamphetamine.

3 2187. The umbilical cord that connected Plaintiffs Newborn baby J.A.S. and Mrs. Smith
4 was tested on April 9th, 2021, and was negative for amphetamines and
5 methamphetamines.

6 2188. Despite the umbilical cord that connected Plaintiffs Newborn baby J.A.S. and
7 Mrs. Smith testing negative for illegal drugs, Defendants St. Luke's Hospital and Onsite
8 Neonatal, acting through agent, employee, or assign Defendant Ms. Cynthia Shultz,
9 MD, continued the narrative that Plaintiff Mrs. Smith ingested methamphetamine and
10 that Plaintiff Mrs. Smith gave birth to her son Plaintiff Newborn baby J.A.S. who also
11 suffered the deleterious effects of methamphetamine.

12 2189. Medical records on April 9th, 2021, reflect the statement, "[F]amily was requesting
13 discharge at 12 hours of life."

14 2190. Mr. and Mrs. Smith requested at approximately 12-hours of Plaintiff Newborn
15 baby J.A.S.'s life that the Smith Family be discharged from Defendant St. Luke's
16 Hospital when practicable, not immediately at 12 hours from birth, as is suggested in the
17 medical records entered by Defendant St. Luke's Hospital agents, employees, and/or
18 assigns.

19 2191. Defendants St. Luke's Hospital and Onsite Neonatal through their agents,
20 employees, or assigns, was further attempting to imply that Plaintiff Mrs. Smith was
21 urgently seeking to go home so that she could consume methamphetamine by making
22 the medical records appear that Plaintiff Mrs. Smith quickly sought to reingest
23 methamphetamine by going home as soon as possible after her newborn baby's birth.

1 2192. Beginning on April 10th, 2021 the statement, “High probability of life[-]threatening
2 clinical deterioration in infant’s condition without treatment,” began regularly appearing
3 in medical records.

4 2193. Mr. and Mrs. Smith were not ever told by any agent, employee, or assign of
5 Defendants St. Luke’s Hospital nor Onsite Neonatal that Plaintiff Newborn baby J.A.S.
6 had a, “High probability of life[-]threatening clinical deterioration...without treatment.”

7 2194. Despite the accusation of methamphetamine ingestion by Defendants St. Luke’s
8 Hospital and Onsite Neonatal and their agents, assigns, or employees, Plaintiff Mrs.
9 Smith was allowed to breastfeed Plaintiff Newborn baby J.A.S.

10 2195. Despite Plaintiffs Mrs. Smith and Newborn baby J.A.S. being suspected of
11 suffering the deleterious effects of methamphetamine, state mandated policies and
12 procedures for methamphetamine withdrawal were not implemented for Plaintiff
13 Newborn baby J.A.S. by Defendants St. Luke’s Hospital, nor, Onsite Neonatal, nor any
14 other health provider.

15 2196. Notes on medical records by non-radiology experts from April 11th, 2021, stated
16 that, “...upon admission to the NICU [Newborn baby J.A.S.] showed hazy lung fields
17 with expansion to 5-9 ribs.”

18 2197. Radiology indicates in the medical record no “hazy lung fields” or “expansion”
19 into Plaintiff Newborn baby J.A.S.’s lungs.

20 2198. Radiology, instead indicates in the medical record, “Perhaps minimal asymmetric
21 granular opacity on the right. No consolidation. No discernable pneumothorax or
22 layering pleural effusion on limited supine imaging. Osseous structures appear within
23 normal limits for patient age.”

2199. Upon information and belief, Defendants St. Luke's Hospital and Onsite Neonatal, and other parties named and unnamed in this lawsuit, manipulated the medical records in their own interpretations of the radiologist's report to paint Plaintiffs Newborn baby J.A.S. and Mrs. Smith as suffering the deleterious effects of methamphetamine by constructing a reason to keep Plaintiff Newborn baby J.A.S. in the hospital against the will and consent of his parents.

2200. As represented in the medical documentation, beginning on April 10th, 2021, Plaintiff Mrs. Smith was under constant monitoring by all Defendant St. Luke's Hospital and Onsite Neonatal for "inappropriate behavior" via their agents, employees, and/or assigns.

2201. As of April 9th, 2021, Plaintiff Mr. Smith was not allowed to ever be on Defendant St. Luke's Hospital Property at the consequence of being arrested.

2202. As of April 10th, 2021, Plaintiff Mrs. Smith was supervised around the clock by male security guards, even while breastfeeding, and walking to the restroom.

Additional Context & The Slandorous Statement

2203. Upon information and belief, Defendant Ms. Cynthia Shultz, MD supported the hostile atmosphere intentionally created by Defendants St. Luke's Hospital and Onsite Neonatal, against the Plaintiff Smith Family.

2204. Defendant Ms. Cynthia Shultz, MD, on April 9th, 2021 in Plaintiff Newborn baby J.A.S.'s medical records, under the heading "Quick Note" by Defendant Ms. Cynthia Shultz, MD, represented the following, "Dr. Marlino reported that father became agitated

1 and confrontational after learning of the routine report to C&Y for maternal and baby
2 positive UDS screen”.

3 2205. Ms. Teresa Marlino, MD, on April 9th, 2021, communicated to Defendant Cynthia
4 Shultz, MD, that the “UDS” or “urinary drug screening” that Plaintiffs Mrs. Smith and
5 Newborn baby J.A.S. tested positive for was the illegal and harmful controlled
6 substance methamphetamine.

7 2206. Defendant Ms. Cynthia Shultz, MD, on April 9th, 2021 in Plaintiff Newborn baby
8 J.A.S.’s medical records, under the heading “Quick Note” by Ms. Cynthia Shultz, MD,
9 represented the following, “I was instructed to call C&Y to report the situation. I spoke
10 with Tonya #402 and reported the events as stated above.”

11 2207. The statement by Defendant Ms. Cynthia Shultz, MD, “Dr. Marlino reported that
12 father became agitated and confrontational after learning of the routine report to C&Y
13 for maternal and baby positive UDS screen,” is among the “events stated above” in the
14 document.

15 2208. Plaintiff Mrs. Smith did not ever test positive for methamphetamine.

16 2209. Plaintiff Newborn baby J.A.S. did not ever test positive for methamphetamine.

17 2210. There is not any valid reason to place a mother’s medical information in her
18 newborn baby’s medical records, as that is a violation of the mother’s right to medical
19 privacy; each individual’s medical records should only represent themselves.

20 2211. There is not any valid reason to place false medical information about a
21 postpartum mother in her newborn baby’s medical records.

22 2212. A likely reason to place false medical information about a mother in her newborn
23 baby’s medical records is to attempt to color Plaintiff Mrs. Smith as having ingested

1 illegal methamphetamine and that by extension her newborn baby suffered the
2 deleterious effects of methamphetamine.

3 *Slander Per Se III(a)*

4 2213. The statement in Plaintiff Newborn baby J.A.S.'s medical records as represented
5 by Defendant Ms. Cynthia Shultz, MD, and ratified with the weight of her position that,
6 "Dr. Marlino reported that father became agitated and confrontational after learning of
7 the routine report to C&Y for maternal and baby positive UDS screen," harmed the
8 reputation of Plaintiffs Mrs. Smith and Newborn baby J.A.S. in the estimation of the
9 community by stating that Plaintiff Mrs. Smith ingested illegal methamphetamines and
10 that she and her son Plaintiff Newborn child J.A.S. suffered the deleterious effects of
11 ingesting illegal and harmful substances.

12 2214. The defamatory statement is harmful in character because it states that Plaintiff
13 Mrs. Smith has ingested the illegal and harmful substance of methamphetamine and
14 that she passed that harm onto her child Plaintiff Newborn baby J.A.S.

15 2215. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement to at
16 least Monroe County Children and Youth Services "Tonya #402" where the statements
17 were heard by "Tonya #402".

18 2216. Upon information and belief, it can be demonstrated through Defendant
19 testimonies, examinations of medical records, and hospital policies, that recipients of
20 the publication understood that the meaning of the publication was that Plaintiff Mrs.
21 Smith had ingested illegal methamphetamine and passed that harm onto newborn baby
22 J.A.S.

1 2217. Since Plaintiff Newborn baby J.A.S. is Mrs. Smith's baby, it was clear that the
2 defamatory statement was to be applied to both Plaintiffs Newborn baby J.A.S. and Mrs.
3 Smith.

4 2218. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
5 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
6 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to
7 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
8 each other's invalid moral positions leading other staff to regard their inappropriate
9 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
10 considered abused by his mother through her ingestion of illegal drugs, by Defendants
11 St. Luke's Hospital and Onsite Neonatal through their agent, employee, or assign,
12 Defendant Ms. Cynthia Shultz, MD.

13 2219. Upon information and belief, Defendants St. Luke's Hospital and Onsite
14 Neonatal, through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD,
15 abused her conditionally privileged occasion when as a medical provider with the ability
16 to communicate information to state authorities in line with her duties as an agent,
17 employee, or assign of Defendants St. Luke's Hospital and Onsite Neonatal did falsify
18 communicated medical records through the published defamatory statement.

19 2220. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
20 public figures.

21 2221. Since this is a case of a private figure plaintiff redressing issues of private
22 concern, the appropriate standard for this slander claim is one of negligence.

1 2222. Negligence: (1) Medical providers with the ability to communicate medical
2 records to state officials as a function of their assignor, employer, or agency are
3 required to communicate true and accurate records to those state officials.

4 2223. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD did not
5 communicate true and accurate medical records when she represented to Tonya #402
6 of Northampton County Children and Youth Services that, “Dr. Marlino reported that
7 father became agitated and confrontational after learning of the routine report to C&Y
8 for maternal and baby positive UDS screen”.

9 2224. Negligence: (3) Upon information and belief, but for the actions of the Defendant
10 attesting to Plaintiff Mrs. Smith as a methamphetamine user, Plaintiff Mrs. Smith would
11 not have suffered the aforementioned harms and indignities mentioned earlier in this
12 allegation of slanderous defamation, as well, it is likely that Plaintiff Mrs. Smith would
13 not have had pervasive and injurious inquiries about private family matters by state
14 officials.

15 2225. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
16 Defendants’ conduct, including but not limited to, emotional and psychological distress,
17 pain and suffering, and injury to their reputations.

18 2226. In *slander per se* cases Pennsylvania defamation law considers “Words that on
19 their face and without the aid of extrinsic evidence are recognized as injurious are
20 actionable per se....”¹⁶⁵

¹⁶⁵*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

1 2227. Upon information and belief, the Defendant Ms. Cynthia Shultz, MD, directly and
2 unequivocally accused Plaintiff Mrs. Smith of having ingested methamphetamine and
3 she communicated that fact to Tonya #402, which is on its face and without the aid of
4 extrinsic evidence injurious, and actionable for a *slander per se* claim.

5 2228. In *slander pe se* cases, Pennsylvania law observes that, “words imputing a
6 criminal offense, loathsome disease, business misconduct or serious sexual
7 misconduct” will be considered defamatory per se.¹⁶⁶

8 2229. Since Defendant Ms. Cynthia Shultz, MD, directly and unequivocally accused
9 Plaintiff Mrs. Smith of being a methamphetamine to Tonya #402, and since
10 methamphetamine is an illegal controlled substance, the Defendant imputed a criminal
11 offense, thereby making this an actionable *slander per se* claim.

12 2230. Upon information and belief, Plaintiff can demonstrate by a preponderance of
13 evidence that the Defendants St. Luke’s Hospital and Onsite Neonatal, supervised
14 Defendant Ms. Cynthia Shultz, MD in connection with this allegation and are therefore
15 liable under a legal theory of respondeat superior.

16 2231. Upon information and belief, Defendants St. Luke’s Hospital, and/or Onsite
17 Neonatal, supervised Defendant Ms. Cynthia Shultz’s conduct which violated Plaintiffs’
18 rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

19 *Or, In the Alternative,*

20 *Slander Per Quod III(b)*

¹⁶⁶*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 2232. The statement in Plaintiff Mrs. Smith's medical records as represented by
2 Defendant Ms. Cynthia Shultz, MD, "Dr. Marlino reported that father became agitated
3 and confrontational after learning of the routine report to C&Y for maternal and baby
4 positive UDS screen," harmed the reputation of Plaintiffs Mrs. Smith and Newborn baby
5 J.A.S. in the estimation of the community by representing that Plaintiff Mrs. Smith is a
6 user of illegal of methamphetamines and that she and her son Plaintiff Newborn child
7 J.A.S. were addicted to illegal and harmful substances.

8 2233. The defamatory statement is harmful in character because it states that Plaintiff
9 Mrs. Smith has abused the illegal and harmful substance of methamphetamine and that
10 she passed that harm onto her child Plaintiff Newborn baby J.A.S.

11 2234. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement to at
12 least Northampton County Children and Youth Services "Tonya #402" where the
13 statements were heard by "Tonya #402".

14 2235. Upon information and belief, it can be demonstrated through Defendant
15 testimonies, examinations of medical records, and hospital policies that recipients of the
16 publication understood that the meaning of the publication was that Plaintiff Mrs. Smith
17 had ingested illegal methamphetamine.

18 2236. Since Plaintiff Newborn baby J.A.S. is Plaintiff Mrs. Smith's baby, it was clear
19 that the defamatory statement was to be applied to both Plaintiffs Newborn baby J.A.S.
20 and Mrs. Smith.

21 2237. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
22 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
23 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to

1 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
2 each other's invalid moral positions leading other staff to regard their inappropriate
3 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
4 considered abused by his mother through her use of illegal drugs, by Defendant St.
5 Luke's Hospital and Onsite Neonatal through their agent, employee, or assign,
6 Defendant Ms. Cynthia Shultz, MD.

7 2238. Upon information and belief, Defendants St. Luke's Hospital and Onsite
8 Neonatal, through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD,
9 abused her conditionally privileged occasion when as a medical provider with the ability
10 to communicate information to state authorities in line with her duties as an agent,
11 employee, or assign of Defendants St. Luke's Hospital and Onsite Neonatal did falsify
12 communicated medical records through the published defamatory statement.

13 2239. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
14 public figures.

15 2240. Since this is a case of a private figure plaintiff redressing issues of private
16 concern, the appropriate standard for this libel claim is one of negligence.

17 2241. Negligence: (1) Medical providers with the ability to communicate medical
18 records to state officials as a function of their assignor, employer, or agency are
19 required to communicate true and accurate records to those state officials.

20 2242. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD did not
21 communicate true and accurate medical records when she represented to "Tonya #402"
22 of Monroe County Children and Youth Services that, "Dr. Marlino reported that father

1 became agitated and confrontational after learning of the routine report to C&Y for
2 maternal and baby positive UDS screen”.

3 2243. Negligence: (3) Upon information and belief, but for the actions of the Defendant
4 attesting to Plaintiff Mrs. Smith as a methamphetamine user, Plaintiff Mrs. Smith would
5 not have suffered the aforementioned harms and indignities mentioned earlier in this
6 allegation of slanderous defamation, as well, it is likely that Plaintiff Mrs. Smith would
7 not have had pervasive and injurious inquiries about private family matters by state
8 officials.

9 2244. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
10 Defendants’ conduct, including but not limited to, emotional and psychological distress,
11 pain and suffering, and injury to their reputations.

12 2245. In *slander per quod* cases Pennsylvania defamation law considers extrinsic
13 supporting evidence of slanderous behavior if the injurious nature of the words is not
14 apparent.¹⁶⁷

15 2246. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
16 evidence that through the presentation of medical records, police reports, and other
17 administrative documentation that the slanderous statement was not a mere description
18 of the baby or his mother for the medical edification of potential diagnosis concerning
19 Plaintiff Newborn baby J.A.S. or Mrs. Smith, but was instead a statement intended to
20 cast unfounded and harmful aspersions on both Plaintiffs Newborn baby J.A.S. and
21 Mrs. Smith.

¹⁶⁷ *Joseph*, 959 A.2d at n.23.

1 2247. Plaintiffs will need to demonstrate necessary innuendo by Defendant Parties.

2 2248. “Innuendo”, “define[s] the defamatory meaning which the plaintiff attaches to the
3 words” and “show[s] how they come to have that meaning and how they relate to the
4 plaintiff.”¹⁶⁸

5 2249. Methamphetamine is an illegal controlled substance, which has deleterious
6 effects on those that consume it.

7 2250. Deleterious effects caused by methamphetamine when consumed by a pregnant
8 mother will likely be passed on to her child in utero via the umbilical cord.

9 2251. When Defendant Ms. Cynthia Shultz, MD, represented the slanderous statement,
10 adding the weight of the authority of her position to the narrative that Plaintiff Mrs. Smith
11 ingested methamphetamine and passed it along to her newborn baby, it was to make
12 clear to “Tonya #402” that Plaintiff Mrs. Smith consumed methamphetamine and that
13 she likely passed on the deleterious effects of methamphetamine use to her child
14 Plaintiff Newborn baby J.A.S.

15 2252. The slanderous statement relates to the Plaintiffs Newborn baby J.A.S. and Mrs.
16 Smith because the statement is about Plaintiffs Mrs. Smith and Newborn baby J.A.S.,
17 and it is in Plaintiff Mrs. Smith’s medical records.

18 2253. Upon information and belief, Plaintiff can demonstrate by a preponderance of
19 evidence that the Defendants St. Luke’s Hospital and Onsite Neonatal supervised

¹⁶⁸*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962)

(citations omitted).

1 Defendant Ms. Cynthia Shultz, MD in connection with this allegation and are therefore
2 liable under a legal theory of respondeat superior.

3 2254. Upon information and belief, Defendants St. Luke's Hospital, and/or Onsite
4 Neonatal, supervised Defendant Ms. Cynthia Shultz's conduct which violated Plaintiffs'
5 rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

6 *Or, In the Alternative*

7 *Slander by Implication III(c)*

8 **The Slandorous Statement & Implication**

9 2255. Upon information and belief, Defendant Ms. Cynthia Shultz, MD, supported the
10 hostile atmosphere intentionally created by Defendants St. Luke's Hospital and Onsite
11 Neonatal against the Plaintiff Smith Family.

12 2256. Defendant Ms. Cynthia Shultz, MD stated on April 9th, 2021 in Plaintiff Newborn
13 baby J.A.S.'s medical records that, "Dr. Marlino reported that father became agitated
14 and confrontational after learning of the routine report to C&Y for maternal and baby
15 positive UDS screen".

16 2257. Ms. Teresa Marlino, MD did verbalize to Defendant Ms. Cynthia Shultz, MD, the
17 aforementioned statement as a matter of facts.

18 2258. There is not a valid reason to place a mother's medical status in her newborn
19 baby's medical records.

20 2259. A likely reason to place medical information about a mother in her child's medical
21 records is to attempt to color Plaintiff Mrs. Smith as having ingested illegal

1 methamphetamine and that by extension her newborn baby suffered the deleterious
2 effects of methamphetamine.

3 2260. The statement in Plaintiff Newborn baby J.A.S.'s medical records as
4 communicated by Defendant Ms. Cynthia Shultz, MD, that "Dr. Marlino reported that
5 father became agitated and confrontational after learning of the routine report to C&Y
6 for maternal and baby positive UDS screen," harmed the reputation of Plaintiffs Mrs.
7 Smith and Newborn baby J.A.S. in the estimation of the community by implying that
8 Plaintiff Mrs. Smith had ingested illegal methamphetamines and that she and her son
9 Plaintiff Newborn child J.A.S. suffered the deleterious effects of illegal and harmful
10 substance use.

11 2261. The defamatory statement is harmful in character because it implies that Plaintiff
12 Mrs. Smith has ingested the illegal and harmful substance methamphetamine and that
13 she passed that harm onto her child Plaintiff Newborn baby J.A.S.

14 2262. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement to at
15 least Monroe County Children and Youth Services "Tonya #402" where the statements
16 were heard by "Tonya #402".

17 2263. Upon information and belief, it can be demonstrated through Defendant
18 testimonies, examinations of medical records, and hospital policies, that the recipient of
19 the publication understood that the meaning of the publication was that Plaintiff Mrs.
20 Smith had ingested illegal methamphetamine.

21 2264. Since Plaintiff Newborn baby J.A.S. is Plaintiff Mrs. Smith's baby, it was clear
22 that the defamatory statement was to be applied to both Plaintiffs Newborn baby J.A.S.
23 and Mrs. Smith.

1 2265. Harm suffered by the Plaintiffs includes, but is not limited to, a hostile
2 atmosphere, exacerbating Plaintiff's mental health conditions which Defendants St.
3 Luke's Hospital and Onsite Neonatal were aware of, causing a postpartum mother to
4 needlessly suffer without any reasonable amenities when in the NICU, staff ratifying
5 each other's invalid moral positions leading other staff to regard their inappropriate
6 actions with a sense of false righteousness, and Plaintiff Newborn baby J.A.S. being
7 considered abused by his mother through her ingestion of illegal drugs, by Defendants
8 St. Luke's Hospital and Onsite Neonatal through their agent, employee, or assign
9 Defendant Ms. Cynthia Shultz, MD.

10 2266. Upon information and belief, Defendants St. Luke's Hospital and Onsite Neonatal
11 through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD, abused
12 her conditionally privileged occasion when as a medical provider with the ability to alter
13 and manipulate medical records, did write true statements in those records, including
14 the published defamatory statement that in their culmination lead to false assertions
15 about the Plaintiffs.

16 2267. Plaintiffs Newborn baby J.A.S. and Mrs. Smith are private individuals and not
17 public figures.

18 2268. Since this is a case of a private figure plaintiff redressing issues of private
19 concern, the appropriate standard for this libel claim is one of negligence.

20 2269. Negligence: (1) Medical providers with the ability to communicate medical
21 records as a function of their assignor, employer, or agency are required to maintain
22 medical records that reflect the truth of a matter in both itemized mentions of fact and
23 the totality of what those facts are to represent.

1 2270. Negligence: (2) Medical provider Ms. Cynthia Shultz, MD, did maintain true and
2 accurate medical records when itemized mentions of fact were read in isolation from
3 one another; however, when taken as a totality the facts present the Plaintiffs in a
4 harmful and dishonest light, culminating with when Defendant Ms. Cynthia Shultz, MD,
5 represented in Plaintiff Newborn baby J.A.S.'s medical records that Ms. Marlino, MD,
6 did actually and truthfully make the defamatory statement to Defendant Ms. Cynthia
7 Shultz, MD, which were then negligently passed on "Tonya 402".

8 2271. Negligence: (3) Upon information and belief, but for the actions of the Defendant
9 implying that Plaintiff Mrs. Smith was a methamphetamine user, Plaintiff Mrs. Smith
10 would not have suffered the aforementioned harms and indignities mentioned earlier in
11 this allegation of slanderous defamation, as well, it is likely that Plaintiff Mrs. Smith
12 would not have had pervasive and injurious inquiries about private family matters by
13 state officials.

14 2272. Negligence: (4) Plaintiffs have suffered substantial harm as a result of
15 Defendant's conduct, including but not limited to, emotional and psychological distress,
16 pain and suffering, and injury to their reputations.

17 2273. Libel by Implication occurs when "true facts that in context imply a falsehood."¹⁶⁹

¹⁶⁹*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

1 2274. In addition, “the literal accuracy of separate statements will not render a
2 communication ‘true’ where, as here, the implication of the communication as a whole
3 was false.”¹⁷⁰

4 2275. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
5 demonstrate by a preponderance of the evidence that any one statement in Plaintiff
6 Newborn baby J.A.S.’s medical records may be true, but the implication of the
7 communications as a whole in Plaintiff Newborn baby J.A.S.’s medical records is false.

8 2276. While it may be literally true that “...maternal and baby positive UDS screen[,]”
9 and that according to this wording one cannot directly discern an accusation of
10 methamphetamine; however, when placed in context of medical records, policies, and,
11 witness testimonials it is clear that the drug being asserted in Plaintiffs Mrs. Smith and
12 Newborn baby J.A.S. is methamphetamine.

13 2277. As well, if “the defendant juxtaposes [a] series of fact so as to imply a defamatory
14 connection between them, or [otherwise] creates a defamatory implication...” then a
15 slanderous statement by implication is present.¹⁷¹

16 2278. Upon information and belief, Plaintiffs Newborn baby J.A.S. and Mrs. Smith can
17 demonstrate by a preponderance of the evidence that many facts contained within
18 Plaintiff Newborn baby J.A.S.’s medical records juxtapose a series of facts so as to
19 imply a defamatory connection of methamphetamine ingestion by Plaintiff Mrs. Smith,
20 the deleterious effects of which were passed on to Plaintiff Newborn baby J.A.S.

¹⁷⁰*Id.* at 493.

¹⁷¹*Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 2279. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that the Defendants St. Luke's Hospital and Onsite Neonatal supervised
3 Defendant Ms. Cynthia Shultz, MD, in connection with this allegation and are therefore
4 liable under a legal theory of respondeat superior.

5 2280. Upon information and belief, Defendants St. Luke's Hospital, and/or Onsite
6 Neonatal, supervised Defendant Ms. Cynthia Shultz's conduct which violated Plaintiffs'
7 rights under Pennsylvania Statute *42 Pa. C.S. § 8343* for defamation.

8 **Damages for Slander III(a-c)**

9 2281. Plaintiff Mrs. Smith suffered substantial harm as a result of Defendants' conduct,
10 including but not limited to, emotional and psychological distress, pain and suffering,
11 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
12 compensatory damages to account for PTSD therapies and other related treatments as
13 they have been and will continue to be necessary; Plaintiffs respectfully request an
14 amount of \$595,000 in compensatory damages per Defendant.

15 2282. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
16 Neonatal, and Ms. Cynthia Shultz, MD, and therefore, their ability to afford the
17 appropriate training to avoid this egregious violation of the Pennsylvania Statutory Law,
18 and, since harm was actually caused to the current Plaintiff Smith Family, and since
19 harm is likely to continue to harm future postpartum families, and because the acts of
20 the Defendants and their agents, assigns, or employees callously disregarded the
21 Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the
22 imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
23 and Ms. Cynthia Shultz, MD to deter such Defendants from committing to such conduct

in the future which violates Commonwealth of Pennsylvania Statutory Law Plaintiffs respectfully request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's Hospital, Onsite Neonatal, and Ms. Cynthia Shultz, MD.

2283. In the unlikely event that the jury does not find that Plaintiffs Mrs. Smith and Newborn baby J.A.S. suffered any actual injury despite the deprivation of their statutory law rights, the Plaintiff respectfully requests a nominal judgment of \$1.00.

XXXII. § 42 Pa. C. S. § 8343, Defamation - Slander IV

Mr. Smith v. St. Luke's Hospital, Onsite Neonatal, & Ms. Cynthia Shultz, MD

2284. Under Pennsylvania defamation law, a communication will be considered defamatory if it “tends so to harm the reputation of [the complaining party] as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.”¹⁷²

2285. In order for Plaintiffs to succeed in their claim, they must prove the following elements¹⁷³:

- (1) The defamatory character of the communication;
- (2) Its publication by the defendant;
- (3) Its application to the plaintiff;
- (4) The understanding by the recipient of its defamatory meaning;

¹⁷²*MacElree v. Philadelphia Newspapers*, 544 Pa. 117, 124-125 (Pa. 1996) (citations omitted).

¹⁷³42 Pa.C.S. § 8343(a)(1-7).

(5) The understanding by the recipient of it as intended to be applied to the plaintiff;

(6) Special harm resulting to the plaintiff from its publication; and

(7) Abuse of a conditionally privileged occasion.

2286. The Pennsylvania Supreme Court has abolished an “actual malice” standard and has shifted the inquiry to whether a plaintiff is a private individual or a public figure or public official.¹⁷⁴

2287. Pennsylvania has adopted a negligence standard for private figure plaintiff lawsuits regarding issues of private concern.¹⁷⁵

2288. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting to the interests of another.¹⁷⁶

The Context

¹⁷⁴*Am. Future Sys., Inc. v. Better Bus. Bureau*, 592 Pa. 66, 82-83 (Pa. 2007). However, demonstrations of actual malice on the part of the plaintiff can lead to wider array of potential damages.

¹⁷⁵*Wilson v. Slatalla*, 970 F. Supp. 405, 414 (E.D. Pa. 1997).

¹⁷⁶*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2289. Defendants St. Luke's Hospital and Onsite Neonatal, among other parties named
2 and unnamed in this lawsuit, intentionally created an atmosphere hostile to the Smith
3 Family, including Plaintiff Mr. Smith.

4 2290. Defendant Ms. Cynthia Shultz, MD, supported the hostile atmosphere
5 intentionally created by Defendants St. Luke's Hospital and Onsite Neonatal.

6 2291. Defendants St. Luke's Hospital and Onsite Neonatal coordinated their employee,
7 agent, or assign, Defendant Ms. Cynthia Shultz, MD, towards a narrative that Mrs.
8 Smith ingested methamphetamine and that Plaintiff Mrs. Smith gave birth to Newborn
9 baby J.A.S. who also suffered the deleterious effects of methamphetamine use.

10 2292. The umbilical cord that connected Newborn baby J.A.S. and Mrs. Smith was
11 tested on April 9th, 2021, and was negative for amphetamines and methamphetamines.

12 2293. Despite the umbilical cord that connected Newborn baby J.A.S. and Mrs. Smith
13 testing negative for illegal drugs, Defendants St. Luke's Hospital and Onsite Neonatal,
14 acting through agent, employee, or assign Defendant Ms. Cynthia Shultz, MD,
15 continued the narrative that Mrs. Smith ingested methamphetamine and that Mrs. Smith
16 gave birth to Newborn baby J.A.S. who also suffered the deleterious effects of
17 methamphetamine use.

18 2294. Medical records on April 9th, 2021, reflect the statement, "[F]amily was requesting
19 discharge at 12 hours of life."

20 2295. Mr. and Mrs. Smith requested at approximately 12-hours of Newborn baby
21 J.A.S.'s life that the Smith Family be discharged from Defendant St. Luke's Hospital
22 when practicable, not immediately at 12 hours from birth, as is suggested in the medical
23 records entered by St. Luke's Hospital agents, employees, and/or assigns.

1 2296. Defendants St. Luke's Hospital and Onsite Neonatal, through their agents,
2 employees, or assigns, was further attempting to imply that Plaintiff Mrs. Smith was
3 urgently seeking to go home so that she could consume methamphetamine by making
4 the medical records appear that Plaintiff Mrs. Smith sought to reingest
5 methamphetamine by going home as soon as possible after her newborn baby's birth.

6 2297. Beginning on April 10th, 2021 the statement, "High probability of life[-]threatening
7 clinical deterioration in infant's condition without treatment," began regularly appearing
8 in medical records.

9 2298. Mr. and Mrs. Smith were not ever told by any agent, employee, or assign of
10 Defendants St. Luke's Hospital or Onsite Neonatal that Newborn baby J.A.S. had a,
11 "High probability of life[-]threatening clinical deterioration...without treatment."

12 2299. Despite the accusation of methamphetamine ingestion by Defendants St. Luke's
13 Hospital and Onsite Neonatal and their agents, assigns, or employees, Mrs. Smith was
14 allowed to breastfeed Newborn baby J.A.S.

15 2300. Despite Mrs. Smith and Newborn baby J.A.S. being suspected of suffering the
16 deleterious effects of methamphetamine use, state mandated policies and procedures
17 for methamphetamine withdrawal were not implemented for Newborn baby J.A.S. by
18 Defendants St. Luke's Hospital, Onsite Neonatal, nor any other health provider.

19 2301. Notes on medical records by non-radiology experts from April 11th, 2021, stated
20 that, "...upon admission to the NICU [newborn baby J.A.S.] showed hazy lung fields
21 with expansion to 5-9 ribs."

22 2302. Radiology indicates in the medical record no "hazy lung fields" or "expansion"
23 into Newborn baby J.A.S.'s lungs.

1 2303. Radiology, instead indicates in the medical record, "Perhaps minimal asymmetric
2 granular opacity on the right. No consolidation. No discernable pneumothorax or
3 layering pleural effusion on limited supine imaging. Osseous structures appear within
4 normal limits for patient age."

5 2304. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
6 and other parties named and unnamed in this lawsuit, manipulated the medical records
7 in their own interpretations of the radiologist's report to paint Newborn baby J.A.S. and
8 Mrs. Smith as suffering the deleterious effects of methamphetamine use by constructing
9 a reason to keep Newborn baby J.A.S. in the hospital against the will and consent of his
10 parents.

11 2305. As represented in the medical documentation, beginning on April 10th, 2021, Mrs.
12 Smith was under constant monitoring by all Defendant St. Luke's Hospital and Onsite
13 Neonatal for "inappropriate behavior" via their agents, employees, and/or assigns.

14 2306. As of April 9th, 2021, Mr. Smith was not allowed to ever be on Defendant St.
15 Luke's Hospital Property at the consequence of being arrested.

16 2307. As of April 10th, 2021, Plaintiff Mrs. Smith was supervised around the clock by
17 male security guards, even while breastfeeding, and walking to the restroom.

18 2308. On the evening of April 9th, 2021, after Mr. & Mrs. Smith were ejected from
19 Defendant St. Luke's Hospital's property., Defendant Ms. Cynthia Shultz, MD, created
20 an addendum to Newborn baby J.A.S.'s medical records.

21 2309. The addendum written by Ms. Cynthia Shultz, MD is as follows:

22 "I was called by Dr. Marlino (OB) regarding a concerning
23 parental interaction.

1
2 Dr. Marlino reported that father became agitated and
3 confrontational after learning of the routine report to C&Y for
4 maternal and baby positive UDS screen. She stated that
5 father used offensive language and planned on taking baby
6 from NICU.

7
8 I then checked on infant and learned from nursing that father
9 had been in the room with infant with the intent of taking the
10 baby. Father left the NICU to obtain his car seat.

11
12 I then had nursing call security while I notified the NICU
13 medical director. NICU medical director notified hospital
14 legal and leadership team. The NICU and OB wards were
15 placed on security lock down. Next, police were called.

16
17 I was instructed to call C&Y to report the current situation. I
18 spoke with Tonya #402 and reported the events as stated
19 above. As this infant is on NC respiratory support, IV fluids
20 and IV antibiotics, he is not stable for discharge.

1 Per report from leadership, father was given a no
2 trespassing order and will be arrested if he returns to the
3 hospital.

4
5 Plan for the infant to remain in the NICU until clinically ready
6 for discharge and further guidance from C&Y and/or legal
7 team.”

8 2310. Upon information and belief, Defendant Ms. Cynthia Shultz, MD participated in
9 and approved of a false narrative concerning Plaintiff Mr. Smith, that Plaintiff Mr. Smith
10 was in some way too dangerous or violent to be allowed to visit his son, Newborn baby
11 J.A.S., on Defendant St. Luke’s Hospital’s property.

12 **The Slanderous Statement**

13 2311. Upon information and belief, Defendant Ms. Cynthia Shultz, MD supported the
14 hostile atmosphere intentionally created by Defendant St. Luke’s Hospital and Onsite
15 Neonatal against the Plaintiff Smith Family.

16 2312. Defendant Ms. Cynthia Shultz, MD, on April 9th, 2021, placed an addendum in
17 Newborn baby J.A.S.’s medical records including the slanderous statement represented
18 by Defendant Ms. Cynthia Shultz, MD, that “She [Dr. Marlino] stated that father used
19 offensive language and planned on taking baby from NICU.”

20 2313. Plaintiff Mr. Smith did not ever exceed the bounds of reasonable civil discourse,
21 did not vocalize what a reasonable person would call “curse words”, nor did any verbal
22 espousals by Defendant Mr. Smith appeal to a prurient interest.

2314. Upon information and belief, Ms. Cynthia Shultz, MD, supported the false narrative created about Plaintiff Mr. Smith that Plaintiff Mr. Smith acted in a manner befitting a no trespass order by the local police department.

2315. Upon information and belief, there is not any valid reason to place a father's legal information in his newborn child's medical records.

2316. Upon information and belief, there is not a valid reason to place information stating Plaintiff Mr. Smith's supposed personality traits in his newborn baby's medical records.

2317. A likely reason to place alleged personality traits and legal information about a newborn child's father in that child's medical records is to attempt to color Plaintiff Mr. Smith as a potentially criminally violent person capable of kidnapping his own child from a hospital.

Slander Per Se IV(a)

2318. The statement in Newborn baby J.A.S.'s medical records as communicated by Defendant Ms. Cynthia Shultz, MD, that "She [Dr. Marlino] stated that father used offensive language and planned on taking baby from NICU," harmed the reputation of Plaintiff Mr. Smith in the estimation of the community by stating that Plaintiff Mr. Smith is an individual of criminal caliber, and that he acted in a manner befitting a no trespassing order from the Bethlehem Police Department.

2319. The defamatory statement is harmful in character because it states that Plaintiff Mr. Smith, at the behest of Defendants St. Luke's Hospital and/or Onsite Neonatal, is a

1 person capable of such violence that he cannot be permitted on Defendant St. Luke's
2 Hospital property to visit with his newborn baby child in the N.I.C.U.

3 2320. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement to at
4 least Monroe County Children and Youth Services "Tonya #402" where the statements
5 were heard by "Tonya #402".

6 2321. Upon information and belief, it can be demonstrated through Defendant
7 testimonies, examinations of medical records, and hospital policies that recipient of the
8 publication understood that the meaning of the publication was that Plaintiff Mr. Smith
9 may attempt to violently infiltrate the NICU at Defendant St. Luke's Hospital to recover
10 his child.

11 2322. Since Newborn baby J.A.S. is Plaintiff Mr. Smith's baby, it was clear that the
12 defamatory statement was to be applied to Plaintiff Mr. Smith.

13 2323. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
14 exacerbating Plaintiff's mental health condition, causing a postpartum father to
15 needlessly suffer without his newborn baby who was in neonatal intensive care, staff
16 ratifying each other's invalid moral positions leading other staff to regard their
17 inappropriate actions with a sense of false righteousness, and a baseless reputation for
18 violent behavior, by Defendants St. Luke's Hospital and Onsite Neonatal through their
19 agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD.

20 2324. Upon information and belief, Defendants St. Luke's Hospital and Onsite
21 Neonatal, through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD,
22 abused her conditionally privileged occasion when as a medical provider with the ability
23 to communicate information to state authorities in line with her duties as an agent,

1 employee, or assign of Defendants St. Luke's Hospital and Onsite Neonatal did falsify
2 communicated medical records through the published defamatory statement.

3 2325. Plaintiff Mr. Smith is a private individual and not a public figure.

4 2326. Since this is a case of a private figure plaintiff redressing issues of private
5 concern, the appropriate standard for this libel claim is one of negligence.

6 2327. Negligence: (1) Medical providers with the ability to communicate medical
7 records to state officials as a function of their assignor, employer, or agency are
8 required to communicate true and accurate records to those state officials.

9 2328. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD did not
10 communicate true and accurate medical records when she represented to "Tonya #402"
11 of Monroe County Children and Youth Services that, "She [Dr. Marlino] stated that
12 father used offensive language and planned on taking baby from NICU".

13 2329. Negligence: (3) Upon information and belief, but for the actions of the Defendant
14 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
15 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
16 earlier in this allegation of slanderous defamation, as well, it is possible that Plaintiff Mr.
17 Smith would not have had pervasive and injurious inquiries about private family matters
18 by state officials.

19 2330. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
20 conduct, including but not limited to, emotional and psychological distress, pain and
21 suffering, and injury to his reputation.

1 2331. In *slander per se* cases Pennsylvania defamation law considers “Words that on
2 their face and without the aid of extrinsic evidence are recognized as injurious are
3 actionable per se....”¹⁷⁷

4 2332. Upon information and belief, Defendants’ directly and unequivocally accused
5 Plaintiff Mr. Smith of being an individual violent enough that a no trespass order was
6 appropriate for his character, so much so, that such information should appear in his
7 newborn child’s medical records, are on their face and without the aid of extrinsic
8 evidence injurious, and actionable for a *slander per se* claim.

9 2333. In *slander pe se* cases, Pennsylvania law observes that, “words imputing a
10 criminal offense, loathsome disease, business misconduct or serious sexual
11 misconduct” will be considered defamatory per se.¹⁷⁸

12 2334. Since Defendants’ directly and unequivocally accused Plaintiff Mr. Smith of
13 having the characteristics of a trespasser, and thereby a criminal, in his newborn child’s
14 medical records, and since trespassing is an act violating the law, the Defendants’
15 imputed a criminal offense, thereby making this an actionable *slander per se* claim.

16 2335. Upon information and belief, Plaintiff can demonstrate by a preponderance of
17 evidence that the Defendants St. Luke’s Hospital and/or Onsite Neonatal supervised
18 Defendant Ms. Cynthia Shultz, MD, in connection with this allegation and is therefore
19 liable under a legal theory of respondeat superior.

¹⁷⁷*Joseph v. Scranton Times L.P.*, 959 A.2d 322, n.23 (Pa. Super. Ct. 2008).

¹⁷⁸*Hrishenko v. Coombs*, 2014 Pa. Super. Unpub. LEXIS 880, *9 (Pa. Super. Ct. 2014).

1 2336. Upon information and belief, Defendants St. Luke's Hospital, and/or Onsite
2 Neonatal, supervised Defendant Ms. Cynthia Shultz's conduct which violated Plaintiffs'
3 rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

4 *Or, In the Alternative,*

5 *Slander Per Quod IV(b)*

6 2337. The statement in Newborn baby J.A.S.'s medical records as represented by
7 Defendant Ms. Cynthia Shultz, MD, that "She [Dr. Marlino] stated that father used
8 offensive language and planned on taking baby from NICU," harmed the reputation of
9 Plaintiff Mr. Smith in the estimation of the community by stating that Plaintiff Mr. Smith is
10 an individual of criminal caliber, and that acted in a manner befitting a no trespassing
11 order from the Bethlehem Police Department.

12 2338. The defamatory statement is harmful in character because it states that Plaintiff
13 Mr. Smith, at the behest of Defendants St. Luke's Hospital and/or Onsite Neonatal, is a
14 person capable of such violence that he cannot be permitted on Defendant St. Luke's
15 Hospital Property to visit with his newborn baby child in the N.I.C.U.

16 2339. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement to at
17 least Monroe County Children and Youth Services "Tonya #402" where the statements
18 were heard by "Tonya #402".

19 2340. Upon information and belief, it can be demonstrated through Defendant
20 testimonies, examinations of medical records, and hospital policies that recipients of the
21 publication understood that the meaning of the publication was that Plaintiff Mr. Smith

1 may attempt to violently infiltrate the NICU at Defendant St. Luke's Hospital to recover
2 his child.

3 2341. Since Newborn baby J.A.S. is Plaintiff Mr. Smith's baby, it was clear that the
4 defamatory statement was to be applied to Plaintiff Mr. Smith.

5 2342. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
6 exacerbating Plaintiff's mental health condition, causing a postpartum father to
7 needlessly suffer without his newborn baby child who was in neonatal intensive care,
8 staff ratifying each other's invalid moral positions leading other staff to regard their
9 inappropriate actions with a sense of false righteousness, and a baseless reputation for
10 violent behavior, by Defendants St. Luke's Hospital and Onsite Neonatal through their
11 agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD.

12 2343. Upon information and belief, Defendants St. Luke's Hospital and Onsite
13 Neonatal, through their agent, employee, or assign, Defendants Ms. Cynthia Shultz,
14 MD, abused her conditionally privileged occasion when as a medical provider with the
15 ability to communicate information to state authorities in line with her duties as an agent,
16 employee, or assign of Defendants St. Luke's Hospital and Onsite Neonatal did falsify
17 communicated medical records through the published defamatory statement.

18 2344. Plaintiff Mr. Smith is a private individual and not a public figure.

19 2345. Since this is a case of a private figure plaintiff redressing issues of private
20 concern, the appropriate standard for this slander claim is one of negligence.

21 2346. Negligence: (1) Medical providers with the ability to communicate medical
22 records to state officials as a function of their assignor, employer, or agency are
23 required to communicate true and accurate records to those state officials.

1 2347. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD did not
2 communicate true and accurate medical records when she represented to “Tonya #402”
3 of Monroe County Children and Youth Services that, “She [Dr. Marlino] stated that
4 father used offensive language and planned on taking baby from NICU”.

5 2348. Negligence: (3) Upon information and belief, but for the actions of the Defendant
6 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
7 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
8 earlier in this allegation of libelous defamation, as well, it is possible that Plaintiff Mr.
9 Smith would not have had pervasive and injurious inquiries about private family matters
10 by state officials.

11 2349. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant’s
12 conduct, including but not limited to, emotional and psychological distress, pain and
13 suffering, and injury to his reputation.

14 2350. In *slander per quod* cases Pennsylvania defamation law considers extrinsic
15 supporting evidence of slanderous behavior if the injurious nature of the words is not
16 apparent.¹⁷⁹

17 2351. Upon information and belief, Plaintiff can demonstrate by a preponderance of
18 evidence that through the presentation of medical records, informational reports, and
19 other administrative documentation that the slanderous statement was not a mere
20 description of the father for the medical edification of potential diagnosis concerning

¹⁷⁹Joseph, 959 A.2d at n.23.

1 Newborn baby J.A.S., but was instead a statement intended to cast unfounded and
2 harmful aspersions on Plaintiff Mr. Smith.

3 2352. Plaintiff will need to demonstrate necessary innuendo by Defendant Parties.

4 2353. “Innuendo”, “define[s] the defamatory meaning which the plaintiff attaches to the
5 words” and “show[s] how they come to have that meaning and how they relate to the
6 plaintiff.”¹⁸⁰

7 2354. A ‘no trespass’ order is not supposed to be contrived without meaning and
8 therefore carries with it the implied weight of violence if such a person were to trespass.

9 2355. When Defendant Ms. Cynthia Shultz, MD communicated the slanderous
10 statement with the weight and authority of her position it was to make clear to other
11 medical professionals, administrators, and/or county personnel that Plaintiff Mr. Smith is
12 a person of violent nature who cannot be around his newborn baby child or hospital
13 personnel.

14 2356. The slanderous statement relates to Plaintiff Mr. Smith because the statement is
15 about the father of the newborn child, Plaintiff Mr. Smith, and the slanderous statement
16 is in Newborn baby J.A.S.’s medical records.

17 2357. Upon information and belief, Plaintiff can demonstrate by a preponderance of
18 evidence that the Defendants St. Luke’s Hospital and/or Onsite Neonatal supervised
19 Defendant Ms. Cynthia Shultz, MD, in connection with this allegation and are therefore
20 liable under a legal theory of respondeat superior.

¹⁸⁰*Cosgrove Studio & Camera Shop, Inc. v. Pane*, 408 Pa. 314, 319 (Pa. 1962)

(citations omitted).

1 2358. Upon information and belief, Defendants St. Luke's Hospital, and/or Onsite
2 Neonatal, supervised Defendant Ms. Cynthia Shultz's conduct which violated Plaintiffs'
3 rights under Pennsylvania Statute 42 Pa. C.S. § 8343 for defamation.

4 *Or, In the Alternative*

5 *Slander by Implication IV(c)*

6 2359. The statement in Newborn baby J.A.S.'s medical records as represented by
7 Defendant Ms. Cynthia Shultz, MD, that "She [Dr. Marlino] stated that father used
8 offensive language and planned on taking baby from NICU," harmed the reputation of
9 Plaintiff Mr. Smith in the estimation of the community by representing that Plaintiff Mr.
10 Smith is an individual of criminal caliber, and that he acted in a manner befitting a no
11 trespassing order from the Bethlehem Police Department.

12 2360. Ms. Teresa Marlino, MD did verbalize to Defendant Ms. Cynthia Shultz, MD, the
13 aforementioned statement as a matter of facts.

14 2361. The defamatory statement is harmful in character because it states that Plaintiff
15 Mr. Smith, at the behest of Defendants St. Luke's Hospital and/or Onsite Neonatal, is a
16 person capable of such violence that he cannot be permitted on Defendant St. Luke's
17 Hospital Property to visit with his newborn baby child in the N.I.C.U.

18 2362. Defendant Ms. Cynthia Shultz, MD, published the defamatory statement to at
19 least Monroe County Children and Youth Services "Tonya #402" where the statements
20 were heard by "Tonya #402".

21 2363. Upon information and belief, it can be demonstrated through Defendant
22 testimonies, examinations of medical records, and hospital policies, such as, in-person,

1 around the clock surveillance of a newborn baby child by hospital security officers, that
2 recipients of the publication understood that the meaning of the publication was that
3 Plaintiff Mr. Smith may attempt to violently infiltrate the NICU at Defendant St. Luke's
4 Hospital to recover his child.

5 2364. Since Newborn baby J.A.S. is Mr. Smith's baby, it was clear that the defamatory
6 statement was to be applied to Mr. Smith.

7 2365. Harm suffered by the Plaintiff includes, but is not limited to, a hostile atmosphere,
8 exacerbating Plaintiff's mental health condition, causing a postpartum father to
9 needlessly suffer without his newborn baby child who was in neonatal intensive care,
10 staff ratifying each other's invalid moral positions leading other staff to regard their
11 inappropriate actions with a sense of false righteousness, and a baseless reputation for
12 violent behavior, by Defendants St. Luke's Hospital and Onsite Neonatal through their
13 agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD.

14 2366. Upon information and belief, Defendants St. Luke's Hospital and Onsite Neonatal
15 through their agent, employee, or assign, Defendant Ms. Cynthia Shultz, MD, abused
16 her conditionally privileged occasion when as a medical provider with the ability to alter
17 and manipulate medical records, did write true statements in those records, including
18 the published defamatory statement that in their culmination lead to false assertions
19 about the Plaintiffs.

20 2367. Plaintiff Mr. Smith is a private individual and not a public figure.

21 2368. Since this is a case of a private figure plaintiff redressing issues of private
22 concern, the appropriate standard for this libel claim is one of negligence.

1 2369. Negligence: (1) Medical providers with the ability to communicate medical
2 records as a function of their assignor, employer, or agency are required to maintain
3 medical records that reflect the truth of a matter in both itemized mentions of fact and
4 the totality of what those facts are to represent.

5 2370. Negligence: (2) Medical provider Defendant Ms. Cynthia Shultz, MD, did maintain
6 true and accurate medical records when itemized mentions of fact were read in isolation
7 from one another; however, when taken as a totality, the facts present the Plaintiffs in a
8 harmful and dishonest light, culminating with when Defendant Ms. Cynthia Shultz, MD,
9 represented in Newborn baby J.A.S.'s medical records that Ms. Marlino, MD, did
10 actually and truthfully make the defamatory statement to Defendant Ms. Cynthia Shultz,
11 MD, which was then negligently passed on "Tonya 402".

12 2371. Negligence: (3) Upon information and belief, but for the actions of the Defendant
13 attesting to Plaintiff Mr. Smith as an individual befitting of a no-trespass order, Plaintiff
14 Mr. Smith would not have suffered the aforementioned harms and indignities mentioned
15 earlier in this allegation of slanderous defamation, as well, it is possible that Plaintiff Mr.
16 Smith would not have had pervasive and injurious inquiries about private family matters
17 by state officials.

18 2372. Negligence: (4) Plaintiff has suffered substantial harm as a result of Defendant's
19 conduct, including but not limited to, emotional and psychological distress, pain and
20 suffering, and injury to his reputation.

21 2373. Upon information and belief, Plaintiff can demonstrate by a preponderance of
22 evidence that through the presentation of medical records, informational reports, and
23 other administrative documentation that the slanderous statement was not a mere

1 description of the father for the medical edification of potential diagnosis concerning
2 Newborn baby J.A.S., but was instead a statement intended to cast unfounded and
3 harmful aspersions on Plaintiff Mr. Smith.

4 2374. Slander by Implication occurs when “true facts that in context imply a
5 falsehood.”¹⁸¹

6 2375. In addition, “the literal accuracy of separate statements will not render a
7 communication ‘true’ where, as here, the implication of the communication as a whole
8 was false.”¹⁸²

9 2376. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
10 preponderance of the evidence that any one statement in Newborn baby J.A.S.’s
11 medical records may be true, but the implication of the communications as a whole in
12 Newborn baby J.A.S.’s medical records is false.

13 2377. As well, if “the defendant juxtaposes [a] series of fact so as to imply a defamatory
14 connection between them, or [otherwise] creates a defamatory implication...” then a
15 slanderous statement by implication is present.¹⁸³

16 2378. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
17 preponderance of the evidence that many facts contained within Newborn baby J.A.S.’s

¹⁸¹*Dunlap v. Philadelphia Newspapers, Inc.*, 301 Pa. Super. 475, 491 (Pa. Super. Ct. 1982) (emphasis omitted).

¹⁸²*Id.* at 493.

¹⁸³*Fanelle v. LoJack Corp.*, 2000 U.S. Dist. LEXIS 17767, *10 (E.D. Pa. Dec. 7, 2000).

1 medical records juxtapose a series of facts so as to imply a defamatory connection of
2 violent predilections by Plaintiff Mr. Smith.

3 2379. Although it may be literally true that, “She [Dr. Marlino] stated that father used
4 offensive language and planned on taking baby from NICU,” such a statement
5 erroneously implies that Plaintiff Mr. Smith is a man of violent nature who planned on
6 recovering his child from Defendant St. Luke’s Hospital by whatever means necessary;
7 however, in fact, any language can be considered ‘offensive’ when the recipient of that
8 language does not desire to hear such language, and if Mr. Smith “planned on taking
9 [the] baby from [the] NICU” it was through the proper hospital discharge procedures and
10 not via any means of force or violence.

11 2380. Upon information and belief, Plaintiff Mr. Smith can demonstrate by a
12 preponderance of evidence that the Defendants St. Luke’s Hospital and/or Onsite
13 Neonatal supervised Defendant Ms. Cynthia Shultz, MD, in connection with this
14 allegation and are therefore liable under a legal theory of respondeat superior.

15 2381. Upon information and belief, Defendants St. Luke’s Hospital, and/or Onsite
16 Neonatal, supervised Defendant Ms. Cynthia Shultz’s conduct which violated Plaintiffs’
17 rights under Pennsylvania Statute *42 Pa. C.S. § 8343* for defamation.

18 **Damages for Slander IV(a-c)**

19 2382. Plaintiff Mr. Smith suffered substantial harm as a result of Defendants’ conduct,
20 including but not limited to, emotional and psychological distress, pain and suffering,
21 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
22 compensatory damages to account for PTSD therapies and other related treatments as

1 they have been and will continue to be necessary; Plaintiff respectfully requests an
2 amount of \$595,000 in compensatory damages per Defendant.

3 2383. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
4 Neonatal, and Ms. Cynthia Shultz, MD, and therefore, their ability to afford the
5 appropriate training to avoid this egregious violation of the Pennsylvania Statutory Law,
6 and, since harm was actually caused to the current Plaintiff Smith Family, and since
7 harm is likely to continue to harm future postpartum families, and because the acts of
8 the Defendants and their agents, assigns, or employees callously disregarded the
9 Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the
10 imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
11 and Ms. Cynthia Shultz, MD to deter such Defendants from committing to such conduct
12 in the future which violates Commonwealth of Pennsylvania Statutory Law Plaintiffs
13 respectfully request an amount of \$10,000,000 in punitive damages per Defendants St.
14 Luke's Hospital, Onsite Neonatal, and Ms. Cynthia Shultz, MD.

15 2384. In the unlikely event that the jury does not find that Plaintiff Mr. Smith suffered
16 any actual injury despite the deprivation of his statutory law rights, the Plaintiff
17 respectfully requests a nominal judgment of \$1.00.

18 **Violations of Pennsylvania Common Law**

19 **I. Battery**

20 **Lack of Informed Consent**

1 Newborn baby J.A.S. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
 2 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
 3 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
 4 Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
 5 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
 6 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
 7 Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly
 8 Nardis, CRNP, & Mr. Jerry Hric, MD

9 2385. Pennsylvania law defines a battery as a "harmful or offensive contact" with the
 10 person of another. Contact is offensive "if it offends a reasonable sense of personal
 11 dignity."¹⁸⁴

12 2386. Needlesticks that administer antibiotics are a sufficient basis for a claim of battery
 13 by lack of informed consent because without consent the insertion of a needle causes
 14 damage to the individual.¹⁸⁵

15 2387. In Pennsylvania, physicians are duty-bound to obtain a patient's informed
 16 consent before conducting certain procedures, such as surgery, except in
 17 emergencies.¹⁸⁶

¹⁸⁴*Zatuchni v. Richman*, CIVIL ACTION, No. 07-cv-4600, at *9 (E.D. Pa. May 11, 2009).

¹⁸⁵*Id* at *10.

¹⁸⁶*Bilinski v. Wills Eye Hosp.*, Civil Action 16-2728, at *9 (E.D. Pa. Sep. 1, 2021).

1 2388. A physician is liable to his/her patient for performing a procedure without
2 informed consent if: (1) the physician fails to disclose any risk in the recommended
3 treatment, or the existence of any alternative method of treatment, that a reasonable
4 person would deem material in deciding whether to undergo the recommended
5 treatment; (2) the patient would have forgone the recommended treatment had he or
6 she known of the undisclosed information; and (3) as a result of the recommended
7 treatment, the patient actually suffers an injury the risk of which was undisclosed, or the
8 patient actually suffers an injury that would not have occurred had the patient opted for
9 one of the undisclosed methods of treatment.¹⁸⁷

10 2389. Sticking a needle in a human being causes that human being pain regardless of
11 age.

12 2390. Sticking needles in a human being without cause or consent is an act of torture.

13 2391. On the evening of April 9th, 2021 both parents of Plaintiff Newborn baby J.A.S.
14 withdrew consent for treatment of Plaintiff Newborn baby J.A.S. by any and all
15 Defendants.

16 2392. Mrs. Smith, while still in her recovery room, explicitly informed Defendant Ms.
17 Teresa Marlino, MD, that all consent for treatment for Plaintiff Newborn Baby J.A.S. was
18 thereby withdrawn due to Mr. and Mrs. Smith's lack of trust in the Defendants' true
19 intentions.

20 2393. Mr. Smith went to the NICU where Plaintiff Newborn baby J.A.S. was located and
21 informed St. Luke's Hospital staff to remove all medical equipment and devices that

¹⁸⁷ *Id at *9-10.*

1 Defendants attached to Plaintiff Newborn baby J.A.S. from his person, and that no
2 further medical actions were to be rendered by Defendants St. Luke's Hospital and its
3 employees, agents, or assigns.

4 2394. Plaintiff Newborn baby J.A.S. remained attached to medical equipment and
5 devices against the consent of his parents Mr. & Mrs. Smith.

6 2395. Plaintiff Newborn baby J.A.S. also suffered many unnecessary needlesticks
7 throughout his time in the NICU pod, both to administer antibiotics and to test for
8 various "medical reasons".

9 2396. Since the nature of the substance in the needle, or the reason for the
10 administration of the needle are irrelevant when consent for a newborn baby is
11 withdrawn, any needlestick, for any reason, sounds in the tort of battery.

12 2397. Each time Plaintiff Newborn baby J.A.S. had a needle inserted into his body, or
13 left inside of his body after consent was withdrawn by his parents, an intentional battery
14 was committed by the individual inserting the needle or leaving it in Plaintiff Newborn
15 baby J.A.S.'s body.

16 2398. Needlesticks themselves are responsible for the physical damage and pain
17 caused to Plaintiff Newborn baby J.A.S.

18 2399. Mr. & Mrs. Smith did not give their informed consent to any antibiotics given to
19 Plaintiff Newborn baby J.A.S., and withdrew what consent had been previously given.

20 2400. Mr. & Mrs. Smith did not give their informed consent to any tests given to Plaintiff
21 Newborn baby J.A.S., and withdrew what consent have been previously given.

22 2401. Concerning the first element of an informed consent claim: Mr. & Mrs. Smith
23 specifically asked Defendant Ms. Chaminie Wheeler, MD, if there were any alternative

1 treatments for giving Plaintiff Newborn baby J.A.S. antibiotics “just in case he has an
2 infection”.

3 2402. Defendant Ms. Chaminie Wheeler, MD responded to Mr. & Mrs. Smith that there
4 were no alternative treatments other than the antibiotics that were being offered.

5 2403. Mr. & Mrs. Smith specifically told Defendant Ms. Chaminie Wheeler, MD that Mr.
6 Smith was allergic to penicillin and many of its derivatives, and that he was concerned
7 that he may have genetically passed on such potential for allergic reactions.

8 2404. Defendant Ms. Chaminie Wheeler, MD responded to Mr. & Mrs. Smith that there
9 “were no known side-effects in babies from the antibiotics that were being offered.”

10 2405. Defendant Ms. Chaminie Wheeler, MD did not explain to Mr. & Mrs. Smith that
11 pyloric stenosis was a possible side-effect of antibiotics being administered to a baby in
12 the first few days of life.

13 2406. Concerning the second element of an informed consent claim: Mr.& Mrs. Smith
14 absolutely would have foregone administering antibiotics to Plaintiff Newborn baby
15 J.A.S. if they had known of the possibility of Plaintiff Newborn baby J.A.S. developing
16 pyloric stenosis from the administration of the antibiotics at such an early age, thereby
17 precluding any unnecessary needlesticks in Plaintiff Newborn baby J.A.S.

18 2407. Plaintiff Newborn baby J.A.S. did in fact suffer near death dehydration as a result
19 of the condition of pyloric stenosis which was caused by the antibiotics administered by
20 Defendant St. Luke’s Hospital and its employees, agents, and/or assigns.

21 2408. Upon information and belief, Defendant Ms. Chaminie Wheeler, MD also
22 forcefully and repeatedly told Mr. & Mrs. Smith to allow Plaintiff Newborn baby J.A.S. to

1 be admitted to the NICU by concocting a fiction about Plaintiff Newborn baby J.A.S.
2 having difficulty breathing.

3 2409. Mr. & Mrs. Smith were intensely skeptical about the information about Plaintiff
4 Newborn baby J.A.S.'s breathing and the necessity of him being removed from Mrs.
5 Smith's postpartum hospital room to the NICU.

6 2410. Mr. Smith requested that all treatments for Plaintiff Newborn baby J.A.S. be
7 administered in Mrs. Smith's postpartum hospital room.

8 2411. Mr. Smith's request was denied outright and he was told that do so would be
9 "impossible" by Defendant Ms. Chaminie Wheeler, MD.

10 2412. Mr. & Mrs. Smith relented consent when Defendant Ms. Chaminie Wheeler, MD
11 told Mr. & Mrs. Smith that admitting Plaintiff Newborn baby J.A.S. to the NICU under the
12 given circumstances was a "no brainer" and it was clear that Defendant Ms. Chaminie
13 Wheeler, MD was not going to take a "no" from Mr. & Mrs. Smith under any
14 circumstances.

15 2413. Mr. & Mrs. Smith would not have consented to Plaintiff Newborn baby J.A.S.
16 being admitted to the NICU, and tests being administered, including blood being drawn
17 and the administration of antibiotics, if they had known the information provided about
18 Plaintiff Newborn baby J.A.S.'s health and well-being was nearly entirely fabricated.

19 2414. As a consequence of his admittance to the NICU, Plaintiff Newborn baby J.A.S.
20 became subject to a multitude of unnecessary testing and treatment, against the
21 consent of his parents Mr. & Mrs. Smith, which required needlesticks, including bilirubin
22 tests.

1 2415. The unnecessary needlesticks into Plaintiff Newborn baby J.A.S. were of a
2 torturous nature and caused him physical pain and damage.

3 2416. Upon information and belief, Defendant St. Luke's Hospital ordered its
4 employees, agents, and/or assigns to ignore the will of the parents Mr. & Mrs. Smith
5 and ordered its staff to say to Mr. & Mrs. Smith whatever was necessary to get Mr. &
6 Mrs. Smith to allow Plaintiff Newborn baby J.A.S. to be admitted to the NICU.

7 2417. Regardless of any consent previously given, all consent for treatment of any kind
8 for Plaintiff Newborn baby J.A.S. was withdrawn on the evening of April 9th, 2021, and
9 any touching of Plaintiff Newborn baby J.A.S. was unwanted, and anyone who did so
10 committed the tort of battery.

11 2418. Consent by Mr. & Mrs. Smith may never have actually been valid because from
12 intake and triage into Defendant St. Luke's Hospital, Defendants may have been
13 gathering information with a "prosecutorial eye" as opposed to for valid medical
14 treatment of Mrs. Smith and/or Plaintiff Newborn baby J.A.S.

15 2419. Upon information and belief, Defendants Ms. Teresa Marlino, MD, Ms. Cynthia
16 M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb,
17 MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe,
18 MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr.
19 Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms.
20 Kimberly Nardis, CRNP, & Mr. Jerry Hric, MD either ordered or administered an
21 unnecessary needlestick into Plaintiff Newborn baby J.A.S.

22 2420. Upon information and belief, Defendants St. Luke's Hospital, Onsite Neonatal,
23 OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics &

1 Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr.
2 Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
3 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth
4 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago,
5 MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly Nardis,
6 CRNP, & Mr. Jerry Hric, MD's conduct violated Plaintiffs' rights under Pennsylvania
7 common law of battery by lack of informed consent.

8 2421. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
9 evidence that each of the listed Defendants conspired with at least one other Defendant
10 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
11 Plaintiffs.

12 2422. The conspiracy between the Defendant parties and their agents, employees,
13 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
14 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

15 2423. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
16 evidence that the Defendants, St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
17 Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
18 Associates, and Mr. Jerry Hric, MD supervised Ms. Teresa Marlino, MD, Ms. Cynthia M.
19 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb,
20 MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe,
21 MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr.
22 Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, and Ms.

1 Kimberly Nardis, CRNP in connection with this allegation and are therefore liable under
2 a legal theory of respondeat superior

3 2424. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendant's
4 conduct, including but not limited to, emotional and psychological distress, pain and
5 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
6 appropriate compensatory damages to account for PTSD therapies and other related
7 treatments as they have been and will continue to be necessary; Plaintiff respectfully
8 requests an amount of \$3,800 in compensatory damages per Defendant.

9 2425. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
10 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal, St. Luke's
11 Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz,
12 MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
13 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
14 Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto
15 Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly
16 Nardis, CRNP, & Mr. Jerry Hric, MD, and therefore, their ability to afford the appropriate
17 training to avoid this egregious violation of the Pennsylvania Common Law, and, since
18 harm was actually caused to the current Plaintiff Smith Family, and since harm is likely
19 to continue to harm future postpartum families, and because the acts of the Defendants
20 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
21 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
22 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
23 Luke's Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology

Associates, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
 DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD,
 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms.
 Denese Brown, MD, Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms.
 Chaminie Wheeler, MD, Ms. Patricia Bates, CRNP, Ms. Kimberly Nardis, CRNP, & Mr.
 Jerry Hric, MD to deter such Defendant from committing to such conduct in the future
 which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully
 request an amount of \$1,000,000 in punitive damages per Defendants Ms. Dianne
 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD,
 Ms. Kimberly Costello, DO, Mr. Gilberto Santiago, MD, Ms. Patricia Bates, CRNP, and
 Ms. Kimberly Nardis, CRNP; \$5,000,000 per Defendants Mr. Jerry Hric, MD, St. Luke's
 Physicians Group, Bethlehem Neonatal, St. Luke's Obstetrics & Gynecology
 Associates, Mr. Patrick Philpot, DO, and Ms. Chaminie Wheeler, MD; and \$10,000,000
 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
 MD, and Ms. Cynthia M. Shultz, MD..
 2426. In the unlikely event that the jury does not find that Plaintiff Newborn baby J.A.S.
 suffered any actual injury despite the deprivation of his common law rights, the Plaintiff
 respectfully requests a nominal judgment of \$1.00.

II. False Imprisonment

Newborn baby J.A.S. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa
Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,

1 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the “Hospital Leadership Team”, & Mr.

2 Jerry Hric, MD

3 2427. "To state a claim for false imprisonment, a plaintiff must establish: (1) that [he]
4 was detained; and (2) that the detention was unlawful."¹⁸⁸

5 2428. A child may be taken into custody under Pennsylvania law "[b]y a law
6 enforcement officer or duly authorized officer of the court if there are reasonable
7 grounds to believe that the child is suffering from illness or injury or is in imminent
8 danger from his surroundings, and that his removal is necessary." 42 Pa. C.S.A. §
9 6324(3).¹⁸⁹

10 2429. False Imprisonment (1): Upon information and belief, Plaintiff Newborn baby
11 J.A.S. was detained for a period of at least 24 hours and upwards of approximately 72+
12 hours by Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa
13 Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,
14 Ms. Darla Frack, Ms. Dawn Hoffman, the “Hospital Leadership Team”, and Mr. Jerry
15 Hric, MD, in Defendant St. Luke’s Hospital, and against the will and consent of Plaintiff
16 Newborn baby J.A.S.’s parents, Mr. and Mrs. Smith.

17 2430. False Imprisonment (2): The detention of Plaintiff Newborn baby J.A.S. was
18 against the will and consent of his parents, without a court order for the detention of

¹⁸⁸ *James v. City of Wilkes-Barre*, 700 F.3d 675, 682-83 (3d Cir. 2012) (citing *Wallace v. Kato*, 549 U.S. 384, 389 (2007)).” *Ferris v. Milton S. Hershey Med. Ctr.*, No. 1:12-cv-0442, at *49-50 (M.D. Pa. Sep. 29, 2016).

¹⁸⁹ *Id.* at *50.

1 Newborn baby J.A.S., and absent any reasonable exigent circumstance(s) which
2 precluded the detention of Plaintiff Newborn baby J.A.S; thus, Defendants St. Luke's
3 Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD,
4 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
5 the "Hospital Leadership Team", and Mr. Jerry Hric, MD, unlawfully detained Plaintiff
6 Newborn baby J.A.S. in violation of *42 Pa. C.S.A. § 6324*.

7 2431. Specifically, in light of all medical records and physical evidence, there were not
8 any reasonable grounds to believe that Plaintiff Newborn baby J. A.S. was suffering
9 from illness or injury, or was in imminent danger from his surroundings; therefore, the
10 removal of Newborn baby J.A.S. from his parents' care and custody was unnecessary,
11 making the actions of the Defendants unlawful.

12 2432. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
13 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
14 Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team", and Mr. Jerry Hric,
15 MD's conduct violated Plaintiffs' rights under Pennsylvania common law of false
16 imprisonment.

17 2433. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
18 evidence that each of the listed Defendants conspired with at least one other Defendant
19 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
20 Plaintiffs.

21 2434. The conspiracy between the Defendant parties and their agents, employees,
22 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
23 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

1 2435. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that the Defendants, St. Luke's Hospital, Onsite Neonatal, OBHG PA, and Mr.
3 Jerry Hric, MD supervised Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve
4 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the
5 "Hospital Leadership Team", in connection with this allegation and are therefore liable
6 under a legal theory of respondeat superior

7 2436. Accordingly, and in connection with the alleged false imprisonment committed by
8 Defendant parties, Plaintiff Newborn baby J.A.S. requests all Defendant Entities be
9 required to adopt a third-party training program which demonstrates appropriate
10 circumstances under which a child should be reasonably separated from its natural
11 parents, and the specific legal procedures to adhere to for such a separation to take
12 place.

13 2437. Accordingly, and in connection with the alleged false imprisonment committed by
14 Defendant parties, Plaintiff Newborn baby J.A.S. requests all Defendant Persons be
15 required to attend and pass a rigorous third-party training program which demonstrates
16 appropriate circumstances under which a child should be reasonably separated from its
17 natural parents, and the specific legal procedures to adhere to for such a separation to
18 take place.

19 2438. Accordingly, if a third-party cannot be found to render the appropriately rigorous
20 training course, then the Defendant Entities should create their own legal training
21 program which demonstrates appropriate circumstances under which a child should be
22 reasonably separated from its natural parents, and the specific legal procedures to
23 adhere to for such a separation to take place; and, before the created program is

1 implemented, the program must be approved by an appropriate court or federal agency
2 for review; and, the program must be implemented within 180 days of the valid
3 judgment of this honorable Court.

4 2439. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendant's
5 conduct, including but not limited to, emotional and psychological distress, pain and
6 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
7 appropriate compensatory damages to account for PTSD therapies and other related
8 treatments as they have been and will continue to be necessary; Plaintiff respectfully
9 requests an amount of \$3,800 in compensatory damages per Defendant.

10 2440. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
11 Neonatal, OBHG PA, and Mr. Jerry Hric, MD supervised Ms. Teresa Marlino, MD, Ms.
12 Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack,
13 Ms. Dawn Hoffman, the "Hospital Leadership Team," and Mr. Jerry Hric, MD and
14 therefore, their ability to afford the appropriate training to avoid this egregious violation
15 of the Pennsylvania Common Law, and, since harm was actually caused to the current
16 Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum
17 families, and because the acts of the Defendants and their agents, assigns, or
18 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
19 the Plaintiffs respectfully request the imposition of punitive damages on Defendants St.
20 Luke's Hospital, Onsite Neonatal, OBHG PA, and Mr. Jerry Hric, MD supervised Ms.
21 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
22 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team," and
23 Mr. Jerry Hric, MD to deter such Defendant from committing to such conduct in the

1 future which violates Commonwealth of Pennsylvania Common Law Plaintiffs
2 respectfully request an amount of \$5,000,000 in punitive damages per Defendants Mr.
3 Jerry Hric, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
4 Dawn Hoffman, and the "Hospital Leadership Team"; and \$10,000,000 per Defendants
5 St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms.
6 Cynthia Shultz, MD..
7 2441. In the unlikely event that the jury does not find that Plaintiff Newborn baby J.A.S.
8 suffered any actual injury despite the deprivation of his common law rights, the Plaintiff
9 respectfully requests a nominal judgment of \$1.00.

10 **III. Breach of Physician-Patient Confidentiality**

11 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
12 MD, Ms. Cynthia Shultz, MD, & Mr Jerry Hric, MD

13 2442. In admitting Plaintiff Mrs. Smith as a patient, and by accepting to be the location
14 of Plaintiff Newborn baby J.A.S.'s birth, and undertaking to provide them with medical
15 care, Defendant St. Luke's Hospital owed a duty to all Plaintiffs, recognized by
16 Pennsylvania Common Law, to keep all communications, diagnoses, and treatment
17 information completely confidential.

18 2443. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
19 MD, Ms. Cynthia Shultz, MD breached the common law doctor-patient confidentiality
20 law and neglected this duty with regard to Plaintiff Mrs. Smith by disclosing to
21 Northampton County Children and Youth Services the results of confidential and
22 misleading medical tests.

1 2444. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
2 MD, Ms. Cynthia Shultz, MD breached the common law doctor-patient confidentiality
3 law and neglected this duty with regard to Plaintiff Mrs. Smith by disclosing to Monroe
4 County Children and Youth Services the results of confidential and misleading medical
5 tests.

6 2445. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
7 MD, Ms. Cynthia Shultz, MD breached the common law doctor-patient confidentiality
8 law and neglected this duty with regard to Plaintiff Mrs. Smith by disclosing to agents of
9 Northampton County, specifically the Bethlehem Police Department, the results of
10 confidential and misleading medical tests.

11 2446. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
12 MD, Ms. Cynthia Shultz, MD breached the common law doctor-patient confidentiality
13 law and neglected this duty with regard to Plaintiff Newborn baby J.A.S. by disclosing to
14 Northampton County Children and Youth Services the results of confidential and
15 misleading medical tests.

16 2447. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
17 MD, Ms. Cynthia Shultz, MD breached the common law doctor-patient confidentiality
18 law and neglected this duty with regard to Plaintiff Newborn baby J.A.S. by disclosing to
19 Monroe County Children and Youth Services the results of confidential and misleading
20 medical tests.

21 2448. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
22 MD, Ms. Cynthia Shultz, MD breached the common law doctor-patient confidentiality
23 law and neglected this duty with regard to newborn Plaintiff J.A.S. by disclosing to

1 agents of Northampton County, specifically the Bethlehem Police Department, the
2 results of confidential and misleading medical tests.

3 2449. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
4 MD, Ms. Cynthia Shultz, MD breached its common law duty of physician-patient
5 confidentiality with regard to Plaintiff Mrs. Smith by disclosing confidential information
6 that was communicated for the purposes of seeking medical treatment.

7 2450. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
8 MD, Ms. Cynthia Shultz, MD breached its common law duty of physician-patient
9 confidentiality with regard to Plaintiff Newborn baby J.A.S. by disclosing confidential
10 information that was communicated and/or gathered for the purpose of seeking medical
11 treatment.

12 2451. The information disclosed by Defendants St. Luke's Hospital, Onsite Neonatal,
13 OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD falsely portrayed Plaintiff
14 Mrs. Smith as an abuser of illegal drugs, and thus had a tendency to blacken Plaintiff's
15 character.

16 2452. The information disclosed by Defendants St. Luke's Hospital, Onsite Neonatal,
17 OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD about the welfare of
18 Newborn baby J.A.S. falsely portrayed Plaintiff Mrs. Smith as an abuser of illegal drugs,
19 and thus had a tendency to blacken Plaintiff's character.

20 2453. The information disclosed by Defendants St. Luke's Hospital, Onsite Neonatal,
21 OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD about the welfare of
22 Plaintiff Newborn baby J.A.S., and false portrayal of Plaintiff Mrs. Smith as an abuser of
23 illegal drugs, impugned upon Plaintiff Mr. Smith, father and husband respectively of

1 aforementioned Plaintiffs, that he was married to an illicit drug addict and that he would
2 allow that addiction to be passed along to his child; such aspersions thus had a
3 tendency to blacken Plaintiff's character.

4 2454. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
5 MD, Ms. Cynthia Shultz, MD's conduct violated Plaintiffs' rights under Pennsylvania
6 common law of physician-patient confidentiality.

7 2455. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
8 MD, Ms. Cynthia Shultz, MD conduct was outrageous, willful and/or recklessly
9 indifferent to Plaintiffs' rights.

10 2456. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
11 conduct, including but not limited to, emotional and psychological distress, pain and
12 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
13 appropriate compensatory damages to account for PTSD therapies and other related
14 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
15 request an amount of \$84,800 in compensatory damages per Defendant.

16 2457. Given the substantial wealth of the Defendant St. Luke's Hospital, Onsite
17 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, and therefore,
18 their ability to afford the appropriate training to avoid this egregious violation of the
19 Pennsylvania Common Law, and, since harm was actually caused to the current
20 Plaintiffs Smith Family, and since harm is likely to continue to harm future postpartum
21 families, and because the acts of the Defendant and their agents, assigns, or
22 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
23 the Plaintiff respectfully requests the imposition of punitive damages on Defendant St.

1 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia
 2 Shultz, MD to deter such Defendants from committing to such conduct in the future
 3 which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully
 4 request an amount of \$5,000,000 in punitive damages per Defendant Mr. Jerry Hric,
 5 MD; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA,
 6 Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

7 2458. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 8 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 9 respectfully request a nominal judgment of \$1.00.

10 **IV. Negligence I**

11 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
 12 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
 13 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

14 2459. Under Pennsylvania common law, a negligence claim consists of four elements:
 15 (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain
 16 standard of conduct; (2) a failure to conform to the required standard; (3) a causal
 17 connection between the conduct and the resulting injury; and (4) actual loss or damage
 18 resulting to the interests of another.¹⁹⁰

¹⁹⁰See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2460. Negligence (1): A private medical provider actor removing a newborn child from
2 the custody of its parents has a duty to only do so with a court order or with reasonable
3 suspicion of drug abuse on the part of the mother.

4 2461. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
5 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
6 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team",
7 failed to conform to the aforementioned duty when the Defendants removed Plaintiffs
8 Mr. and Mrs. Smith from Plaintiff Newborn baby J.A.S. by ejecting Mr. and Mrs. Smith
9 from Defendant St. Luke's Hospital property without reasonable suspicion of drug abuse
10 by Plaintiff Mrs. Smith or a court order to separate Plaintiff Newborn baby J.A.S. from
11 his parents.

12 2462. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
13 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
14 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
15 actively and of their own volition, contacted Northampton County CYS, Monroe County
16 CYS, and the Bethlehem Police Department in a concerted effort to separate Plaintiff
17 Newborn baby J.A.S. from his parents Plaintiffs Mr. and Mrs. Smith.

18 2463. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
19 Newborn baby J.A.S. against their will and consent and were left without control over
20 the care of their son Newborn baby J.A.S., including the ability to breastfeed Newborn
21 baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and to consent to
22 Newborn baby J.A.S.'s medical treatment.

1 2464. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
2 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
3 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's" conduct violated
4 Plaintiffs' rights under Pennsylvania common law negligence.

5 2465. Accordingly, and in connection with the alleged negligence of the Defendant
6 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
7 Entities be required to adopt a third-party training program which demonstrates
8 appropriate circumstances under which a child should be reasonably separated from its
9 natural parents, and the specific legal procedures to adhere to for such a separation to
10 take place.

11 2466. Accordingly, and in connection with the alleged negligence of the Defendant
12 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
13 Persons be required to attend and pass a rigorous third-party training program which
14 demonstrates appropriate circumstances under which a child should be reasonably
15 separated from its natural parents, and the specific legal procedures to adhere to for
16 such a separation to take place.

17 2467. Accordingly, if a third-party cannot be found to render the appropriately rigorous
18 training course, then the Defendant Entities should create their own legal training
19 program which demonstrates appropriate circumstances under which a child should be
20 reasonably separated from its natural parents, and the specific legal procedures to
21 adhere to for such a separation to take place; and, before the created program is
22 implemented, the program must be approved by an appropriate court or federal agency

1 for review; and, the program must be implemented within 180 days of the valid
2 judgment of this honorable Court.

3 2468. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
4 conduct, including but not limited to, emotional and psychological distress, pain and
5 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
6 appropriate compensatory damages to account for PTSD therapies and other related
7 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
8 request an amount of \$84,800 in compensatory damages per Defendant.

9 2469. Given the substantial wealth of the Defendant Defendants St. Luke's Hospital,
10 Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
11 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and
12 the "Hospital Leadership Team", and therefore, their ability to afford the appropriate
13 training to avoid this egregious violation of the Pennsylvania Common Law, and, since
14 harm was actually caused to the current Plaintiffs Smith Family, and since harm is likely
15 to continue to harm future postpartum families, and because the acts of the Defendants
16 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
17 reckless and wanton manner, the Plaintiff respectfully requests the imposition of
18 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
19 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
20 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" to
21 deter such Defendants from committing to such conduct in the future which violates
22 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
23 of \$5,000,000 in punitive damages per Defendants Mr. Steve Lanshe, Esq., Mr. Robert

1 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership
 2 Team”; and \$10,000,000 per Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG
 3 PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.
 4 2470. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 5 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 6 respectfully request a nominal judgment of \$1.00.

7 **V. Negligence II**

8 Smith, et al. v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
 9 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
 10 Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”

11 2471. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
 12 or obligation recognized by the law, requiring the actor to conform to a certain standard
 13 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
 14 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
 15 the interests of another.¹⁹¹

16 2472. Negligence (1): A private medical provider actor has a duty not to accuse a
 17 mother of being a child abuser from the results of inconclusive urine drug screening

¹⁹¹ See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 alone, and if such allegations are eventually to be levied, they must be done in light of
2 signs and symptoms of methamphetamine withdrawal from the newborn baby child.

3 2473. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, &
4 Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert
5 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
6 failed to conform to the aforementioned duty when the Defendants accused Plaintiffs
7 Mrs. Smith and Plaintiff Newborn baby J.A.S. of having methamphetamine in their
8 bodies without any signs or symptoms of methamphetamine withdrawal.

9 2474. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, &
10 Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert
11 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
12 actively and of their own volition, began asserting without cause that Plaintiff Mrs. Smith
13 ingested methamphetamine aloud to staff and employees (in both private and common
14 areas of the hospital), written in medical records, to police officers, and to children and
15 youth offices, and they did so without observing any signs or symptoms of
16 methamphetamine withdrawal in Plaintiffs Newborn baby J.A.S. or Mrs. Smith, thereby
17 creating an atmosphere so hostile to the Plaintiff Smith Family that they were eventually
18 ejected from Defendant St. Luke's Hospital property against their will and consent under
19 threat of arrest.

20 2475. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
21 Newborn baby J.A.S. against their will and consent and were left without control over
22 the care of Newborn baby J.A.S., including the ability to breastfeed Newborn baby

1 J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent to Newborn
2 baby J.A.S.'s medical treatment.

3 2476. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
4 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
5 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's" conduct violated
6 Plaintiffs' rights under Pennsylvania common law negligence.

7 2477. Accordingly, and in connection with the alleged negligence of the Defendant
8 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
9 Entities be required to adopt a third-party training program which demonstrates
10 appropriate circumstances under which a child should be reasonably separated from its
11 natural parents, and the specific legal procedures to adhere to for such a separation to
12 take place, including what the signs and symptoms of methamphetamine withdrawal
13 are, when and how to appropriately attest to those symptoms in patient records, and to
14 only separate a newborn child from its parents if signs and symptoms of
15 methamphetamine withdrawal are present.

16 2478. Accordingly, and in connection with the alleged negligence of the Defendant
17 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
18 Persons be required to attend and pass a rigorous a third-party training program which
19 demonstrates appropriate circumstances under which a child should be reasonably
20 separated from its natural parents, and the specific legal procedures to adhere to for
21 such a separation to take place, including what the signs and symptoms of
22 methamphetamine withdrawal are, when and how to appropriately attest to those

1 symptoms in patient records, and to only separate a newborn child from its parents if
2 signs and symptoms of methamphetamine withdrawal are present..

3 2479. Accordingly, if a third-party cannot be found to render the appropriately rigorous
4 training course, then the Defendant Entities should create their own legal training
5 program which demonstrates appropriate circumstances under which a child should be
6 reasonably separated from its natural parents, and the specific legal procedures to
7 adhere to for such a separation to take place, including what the signs and symptoms of
8 methamphetamine withdrawal are, when and how to appropriately attest to those
9 symptoms in patient records, and to only separate a newborn child from its parents if
10 signs and symptoms of methamphetamine withdrawal are present.; and, before the
11 created program is implemented, the program must be approved by an appropriate
12 court or federal agency for review; and, the program must be implemented within 180
13 days of the valid judgment of this honorable Court.

14 2480. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
15 conduct, including but not limited to, emotional and psychological distress, pain and
16 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
17 appropriate compensatory damages to account for PTSD therapies and other related
18 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
19 request an amount of \$84,800 in compensatory damages per Defendant.

20 2481. Given the substantial wealth of the Defendant Defendants St. Luke's Hospital,
21 Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
22 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and
23 the "Hospital Leadership Team", and therefore, their ability to afford the appropriate

1 training to avoid this egregious violation of the Pennsylvania Common Law, and, since
 2 harm was actually caused to the current Plaintiffs Smith Family, and since harm is likely
 3 to continue to harm future postpartum families, and because the acts of the Defendants
 4 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
 5 reckless and wanton manner, the Plaintiff respectfully requests the imposition of
 6 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
 7 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
 8 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" to
 9 deter such Defendants from committing to such conduct in the future which violates
 10 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
 11 of \$5,000,000 in punitive damages per Defendants Mr. Steve Lanshe, Esq., Mr. Robert
 12 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
 13 Team"; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG
 14 PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

15 2482. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 16 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 17 respectfully request a nominal judgment of \$1.00.

18 **VI. Negligence III**

19 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
 20 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
 21 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

22 2483. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty

1 or obligation recognized by the law, requiring the actor to conform to a certain standard
2 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
3 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
4 the interests of another.¹⁹²

5 2484. Negligence (1): A private medical provider actor removing a newborn child from
6 the custody of its parents has a duty to only do so with a report of true and valid medical
7 information released to state authorities.

8 2485. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
9 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
10 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
11 failed to conform to the aforementioned duty when the Defendants contacted state
12 authorities Northampton County CYS, Monroe County CYS, and the Bethlehem Police
13 Dept. and reported the false medical information that Plaintiff Mrs. Smith ingested illegal
14 methamphetamine and that she had passed on the deleterious effects of
15 methamphetamine use to her son Plaintiff Newborn baby J.A.S.

16 2486. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
17 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
18 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
19 actively and of their own volition, contacted Northampton County CYS, Monroe County

¹⁹²See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 CYS, and the Bethlehem Police Department and released false medical records that
2 Plaintiff Mrs. Smith had ingested illegal methamphetamine and passed the deleterious
3 effects of methamphetamine use on to her son Plaintiff Newborn baby J.A.S.

4 2487. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
5 Newborn baby J.A.S. against their will and consent and were left without control over
6 the care of their son Newborn baby child J.A.S., including the ability to breastfeed
7 Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent
8 to Newborn baby J.A.S.'s medical treatment.

9 2488. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
10 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
11 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's" conduct violated
12 Plaintiffs' rights under Pennsylvania common law negligence.

13 2489. Accordingly, and in connection with the alleged negligence of the Defendant
14 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
15 Entities be required to adopt a third-party training program which demonstrates
16 appropriate circumstances under which a child should be reasonably separated from its
17 natural parents, and the specific legal procedures to adhere to for such a separation to
18 take place, including the accurate recording of medical records bereft of bias, the
19 prevention of rumors about patients, and the consequences of communication of false
20 medical records to state authorities.

21 2490. Accordingly, and in connection with the alleged negligence of the Defendant
22 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
23 Persons be required to attend and pass a rigorous a third-party training program which

1 demonstrates appropriate circumstances under which a child should be reasonably
2 separated from its natural parents, and the specific legal procedures to adhere to for
3 such a separation to take place, with curricula including the accurate recording of
4 medical records bereft of bias, the prevention of rumors about patients, and the
5 consequences of communication of false medical records to state authorities.

6 2491. Accordingly, if a third-party cannot be found to render the appropriately rigorous
7 training course, then the Defendant Entities should create their own legal training
8 program which demonstrates appropriate circumstances under which a child should be
9 reasonably separated from its natural parents, and the specific legal procedures to
10 adhere to for such a separation to take place, including the accurate recording of
11 medical records bereft of bias, the prevention of rumors about patients, and the
12 consequences of communication of false medical records to state authorities; and,
13 before the created program is implemented, the program must be approved by an
14 appropriate court or federal agency for review; and, the program must be implemented
15 within 180 days of the valid judgment of this honorable Court.

16 2492. Accordingly, and in connection with the alleged negligence of the Defendant
17 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all appropriate
18 monetary relief, compensatory and punitive, as the Court sees fit.

19 2493. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
20 conduct, including but not limited to, emotional and psychological distress, pain and
21 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
22 appropriate compensatory damages to account for PTSD therapies and other related

1 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
2 request an amount of \$84,800 in compensatory damages per Defendant.

3 2494. Given the substantial wealth of the Defendant St. Luke's Hospital, Onsite
4 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve
5 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
6 "Hospital Leadership Team", and therefore, their ability to afford the appropriate training
7 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm
8 was actually caused to the current Plaintiffs Smith Family, and since harm is likely to
9 continue to harm future postpartum families, and because the acts of the Defendants
10 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
11 reckless and wanton manner, the Plaintiff respectfully requests the imposition of
12 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
13 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
14 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" to
15 deter such Defendants from committing to such conduct in the future which violates
16 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
17 of \$5,000,000 in punitive damages per Defendants Mr. Steve Lanshe, Esq., Mr. Robert
18 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
19 Team"; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG
20 PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

21 2495. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
22 any actual injury despite the deprivation of their common law rights, the Plaintiffs
23 respectfully request a nominal judgment of \$1.00.

VII. Negligence IV

Smith, et al. v. Anderson Labs, & Ms. Emily Miller, MD

2496. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting to the interests of another.¹⁹³

2497. Negligence (1): A private medical testing provider actor, when providing drug tests to a fetal care facility, knows, or should know those test results are being used to determine the custodial relationship between newborn children and their parents which creates a duty owed to those parents and newborn children to only use clear-cut and differentiated drug tests which distinguish between results for legal amphetamines and illegal methamphetamines.

2498. Negligence (2): Defendants Anderson Labs, & Ms. Emily Miller, MD, failed to conform to the aforementioned duty when the Defendants provided a fetal medical center, St. Luke's Hospital, with undifferentiated drug test results that did not distinguish between legal amphetamines and illegal methamphetamines.

¹⁹³See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2499. Negligence (3): Defendants Anderson Labs, & Ms. Emily Miller, MD, actively and
2 of their own volition, chose to use an undifferentiated urine drug screen that did not
3 distinguish between legal amphetamines and illegal methamphetamines, and then
4 provided “positive” results to St. Luke’s Hospital, its affiliates, agents, employees, and/or
5 assigns for potential illegal drug use that Defendant Anderson Labs knew or should
6 have known would be potentially used to separate a newborn baby from its parents.

7 2500. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
8 Newborn baby J.A.S. against their will and consent and were left without control over
9 the care of their son Newborn baby child J.A.S., including the ability to breastfeed
10 Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent
11 to Newborn baby J.A.S.’s medical treatment.

12 2501. Defendants Anderson Labs and Ms. Emily Miller, MD’s conduct violated Plaintiffs’
13 rights under Pennsylvania common law negligence.

14 2502. Accordingly, and in connection with the alleged negligence of the Defendant
15 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request Anderson Labs
16 be required to adopt a third-party training program demonstrates the appropriate need
17 for accurate differential testing between legal amphetamines and illegal
18 methamphetamines.

19 2503. Accordingly, and in connection with the alleged negligence of the Defendant
20 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request Anderson Labs
21 be required to immediately cease undifferentiated testing between legal amphetamines
22 and illegal methamphetamines, and, in addition, both categories of indication
23 (amphetamine and methamphetamine) must be clearly separated in lab reports.

1 2504. Accordingly, and in connection with the alleged intentional infliction of emotional
2 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S.
3 request all Defendant Persons be required to attend and pass a rigorous a third-party
4 training program which demonstrates the appropriate need for accurate differential
5 testing between legal amphetamines and illegal methamphetamines.

6 2505. Accordingly, if a third-party cannot be found to render the appropriately rigorous
7 training course, then Anderson Labs should create their own legal training program on
8 when it is appropriate to separate a child from its parents including training which
9 demonstrates the appropriate need for accurate differential testing between legal
10 amphetamines and illegal methamphetamines; and, before the created program is
11 implemented, the program must be approved by an appropriate court or federal agency
12 for review; and, the program must be implemented within 180 days of the valid
13 judgment of this honorable Court.

14 2506. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
15 conduct, including but not limited to, emotional and psychological distress, pain and
16 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
17 appropriate compensatory damages to account for PTSD therapies and other related
18 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
19 request an amount of \$84,800 in compensatory damages per Defendant.

20 2507. Given the substantial wealth of the Defendants Anderson Labs and Ms. Emily
21 Miller, MD, and therefore, their ability to afford the appropriate training to avoid this
22 egregious violation of the Pennsylvania Common Law, and, since harm was actually
23 caused to the current Plaintiffs Smith Family, and since harm is likely to continue to

1 harm future postpartum families, and because the acts of the Defendants and their
2 agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless
3 and wanton manner, the Plaintiff respectfully requests the imposition of punitive
4 damages on Defendants Anderson Labs and Ms. Emily Miller, MD to deter such
5 Defendants from committing to such conduct in the future which violates
6 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
7 of \$5,000,000 in punitive damages per Defendants Anderson Labs, and Ms. Emily
8 Miller, MD.

9 2508. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
10 any actual injury despite the deprivation of their common law rights, the Plaintiffs
11 respectfully request a nominal judgment of \$1.00.

12 **VIII. Negligence V**

13 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Cynthia Shultz,
14 MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler,
15 DO & Ms. Patricia Bates, CRNP

16 2509. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
17 or obligation recognized by the law, requiring the actor to conform to a certain standard
18 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
19 between the conduct and the resulting injury; and (4) actual loss or damage resulting to

1 the interests of another.¹⁹⁴

2 2510. Negligence (1): A private medical provider actor has a duty not to place a
3 newborn baby child's mother's medical information in that newborn child's medical
4 records because to do so would betray the doctor's duty of confidentiality to the mother.

5 2511. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
6 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms.
7 Chaminie Wheeler, DO & Ms. Patricia Bates, CRNP failed to conform to the
8 aforementioned duty when the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG
9 PA, and their agents, employees, and/or assigns unnecessarily placed medical
10 information about mother Plaintiff Mrs. Smith in Plaintiff Newborn baby J.A.S.'s medical
11 records.

12 2512. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
13 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms.
14 Chaminie Wheeler, DO & Ms. Patricia Bates, CRNP actively and of their own volition,
15 placed information in notes and medical records of Plaintiff Newborn baby J.A.S. that
16 Plaintiff Mrs. Smith had ingested methamphetamine, and passed the deleterious effects
17 of methamphetamine use onto Plaintiff Newborn baby J.A.S. despite the fact that
18 Newborn baby J.A.S. did not at any time test positive for methamphetamine or show
19 signs or symptoms of methamphetamine withdrawal.

¹⁹⁴See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2513. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
2 Newborn baby J.A.S. against their will and consent and were left without control over
3 the care of their son Plaintiff Newborn baby child J.A.S., including the ability to
4 breastfeed Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S.,
5 and consent to Newborn baby J.A.S.'s medical treatment.

6 2514. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
7 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
8 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's" conduct violated
9 Plaintiffs' rights under Pennsylvania common law negligence.

10 2515. Accordingly, and in connection with the alleged negligence of the Defendant
11 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
12 Entities be required to adopt a third-party training program which demonstrates
13 appropriate circumstances under which a child should be reasonably separated from its
14 natural parents, and the specific legal procedures to adhere to for such a separation to
15 take place, including the limited number of circumstances under which a mother's
16 medical information may appear in her child's medical records.

17 2516. Accordingly, and in connection with the alleged negligence of the Defendant
18 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
19 Persons be required to attend and pass a rigorous a third-party training program which
20 demonstrates appropriate circumstances under which a child should be reasonably
21 separated from its natural parents, and the specific legal procedures to adhere to for
22 such a separation to take place, including the limited number of circumstances under
23 which a mother's medical information may appear in her child's medical records.

1 2517. Accordingly, if a third-party cannot be found to render the appropriately rigorous
2 training course, then the Defendant Entities should create their own legal training
3 program which demonstrates appropriate circumstances under which a child should be
4 reasonably separated from its natural parents, and the specific legal procedures to
5 adhere to for such a separation to take place, including the limited number of
6 circumstances under which a mother's medical information may appear in her child's
7 medical records; and, before the created program is implemented, the program must be
8 approved by an appropriate court or federal agency for review; and, the program must
9 be implemented within 180 days of the valid judgment of this honorable Court.

10 2518. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
11 conduct, including but not limited to, emotional and psychological distress, pain and
12 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
13 appropriate compensatory damages to account for PTSD therapies and other related
14 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
15 request an amount of \$84,800 in compensatory damages per Defendant.

16 2519. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
17 Neonatal, OBHG PA, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto
18 Santiago, MD, Ms. Chaminie Wheeler, DO & Ms. Patricia Bates, CRNP and therefore,
19 their ability to afford the appropriate training to avoid this egregious violation of the
20 Pennsylvania Common Law, and, since harm was actually caused to the current
21 Plaintiffs Smith Family, and since harm is likely to continue to harm future postpartum
22 families, and because the acts of the Defendants and their agents, assigns, or
23 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,

the Plaintiff respectfully requests the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, DO & Ms. Patricia Bates, CRNP to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants Mr. Gilberto Santiago, MD, and Ms. Patricia Bates, CRNP; \$5,000,000 per Defendants Mr. Patrick Philpot, DO, and Ms. Chaminie Wheeler, DO; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Cynthia Shultz, MD..

2520. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

IX. Negligence VI

Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr.

Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”

2521. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting to the interests of another.¹⁹⁵

2522. Negligence (1): A private medical provider actor removing a newborn child from the custody of its parents has a duty to only do so with a court order or with reasonable suspicion of drug abuse on the part of the mother; and, that reasonable suspicion that the mother ingested an illegal substance requires a reasonable cursory investigation by the hospital before contacting state authorities to allege the serious crime of child abuse of a newborn baby.

2523. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.

¹⁹⁵See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, “Security Supervisor ‘Unknown’”,
2 “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
3 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team” failed to
4 conform to the aforementioned duty when the Defendants removed Plaintiffs Mr. and
5 Mrs. Smith from Plaintiff Newborn baby J.A.S. by ejecting Mr. and Mrs. Smith from
6 Defendant St. Luke’s property without conducting a reasonable cursory investigation to
7 establish reasonable suspicion of illegal drug abuse by Plaintiff Mrs. Smith.

8 2524. Negligence (3): Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms.
9 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
10 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.
11 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
12 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
13 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, “Security Supervisor ‘Unknown’”,
14 “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
15 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team” actively
16 and of their own volition, chose to ignore evidence to the contrary to the allegation that
17 Plaintiff Mrs. Smith ingested methamphetamine, including but not limited to, checking to
18 see if the levels of “positive” methamphetamine in Plaintiff Mrs. Smith’s urine
19 corresponded with the amount of amphetamine she was prescribed, thereby
20 demonstrating that there was not more of any substance in her urine than she was
21 legally prescribed; contacting any of the three physicians, including Mrs. Smith’s
22 previous obstetrician to confirm Mrs. Smith’s assertions of not ingesting

1 methamphetamine; and, observing that neither Plaintiffs Newborn baby J.A.S., nor Mrs.
2 Smith were suffering withdrawal symptoms from substance abuse.

3 2525. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from
4 Plaintiff Newborn baby J.A.S. against their will and consent and were left without control
5 over the care of their son Newborn baby child J.A.S., including the ability to breastfeed
6 Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent
7 to Newborn baby J.A.S.'s medical treatment.

8 2526. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
9 MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD,
10 Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD,
11 Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms.
12 Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms.
13 Patricia Bates, CNRP, "Security Supervisor 'Unknown'", "Head of Hospital Security
14 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
15 Dawn Hoffman, and the "Hospital Leadership Team's" conduct violated Plaintiffs' rights
16 under Pennsylvania common law negligence.

17 2527. Accordingly, and in connection with the alleged negligence of the Defendant
18 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
19 Entities be required to adopt a third-party training program which demonstrates
20 appropriate circumstances under which a child should be reasonably separated from its
21 natural parents, and the specific legal procedures to adhere to for such a separation to
22 take place, including what consists of a reasonable cursory investigation into the

1 likelihood of actual child abuse before reporting the allegation that a mother has abused
2 illegal drugs and passed the deleterious effects of those drugs onto her newborn baby.
3 2528. Accordingly, and in connection with the alleged negligence of the Defendant
4 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
5 Persons be required to attend and pass a rigorous a third-party training program which
6 demonstrates appropriate circumstances under which a child should be reasonably
7 separated from its natural parents, and the specific legal procedures to adhere to for
8 such a separation to take place, including what consists of a reasonable cursory
9 investigation into the likelihood of actual child abuse before reporting the allegation that
10 a mother has abused illegal drugs and passed the deleterious effects of those drugs
11 onto her newborn baby child.

12 2529. Accordingly, if a third-party cannot be found to render the appropriately rigorous
13 training course, then the Defendant Entities should create their own legal training
14 program which demonstrates appropriate circumstances under which a child should be
15 reasonably separated from its natural parents, and the specific legal procedures to
16 adhere to for such a separation to take place, including what consists of a reasonable
17 cursory investigation into the likelihood of actual child abuse before reporting the
18 allegation that a mother has abused illegal drugs and passed the deleterious effects of
19 those drugs onto her newborn baby child; and, before the created program is
20 implemented, the program must be approved by an appropriate court or federal agency
21 for review; and, the program must be implemented within 180 days of the valid
22 judgment of this honorable Court.

1 2530. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
2 conduct, including but not limited to, emotional and psychological distress, pain and
3 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
4 appropriate compensatory damages to account for PTSD therapies and other related
5 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
6 request an amount of \$84,800 in compensatory damages per Defendant.

7 2531. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
8 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
9 Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E.
10 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
11 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I.
12 Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, "Security
13 Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq.,
14 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital
15 Leadership Team" and therefore, their ability to afford the appropriate training to avoid
16 this egregious violation of the Pennsylvania Common Law, and, since harm was
17 actually caused to the current Plaintiffs Smith Family, and since harm is likely to
18 continue to harm future postpartum families, and because the acts of the Defendants
19 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
20 reckless and wanton manner, the Plaintiff respectfully requests the imposition of
21 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
22 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
23 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.

1 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
 2 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
 3 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, “Security Supervisor ‘Unknown’”,
 4 “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
 5 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team” to deter
 6 such Defendants from committing to such conduct in the future which violates
 7 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
 8 of \$1,000,000 in punitive damages per Defendants Ms. Dianne R. Jacobetz, MD, Mr.
 9 Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms.
 10 Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly
 11 A. Costello, DO, Mr. Gilberto I. Santiago, MD, and Ms. Patricia Bates, CNRP;
 12 \$5,000,000 per Defendants Mr. Patrick Philpot, DO, Ms. Chaminie Wheeler, MD,
 13 “Security Supervisor ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Steve
 14 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
 15 “Hospital Leadership Team”; and \$10,000,000 per Defendants St. Luke’s Hospital,
 16 Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia M. Shultz, MD..
 17 2532. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 18 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 19 respectfully request a nominal judgment of \$1.00.

20 **X. Negligence VII**

21 Smith, et al. v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
 22 MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz,

1 MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher
 2 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese
 3 Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
 4 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr.
 5 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital
 6 Leadership Team”

7 2533. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
 8 or obligation recognized by the law, requiring the actor to conform to a certain standard
 9 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
 10 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
 11 the interests of another.¹⁹⁶

12 2534. Negligence (1): A private medical provider actor removing a newborn child from
 13 the custody of its parents has a duty to only do so with a court order or with reasonable
 14 suspicion of drug abuse on the part of the mother, and in the absence of a court order,
 15 when willfully separating a newborn child from its parents, regardless of suspicions of
 16 mother’s guilt concerning the ingestion of methamphetamine, the private medical
 17 provider has a duty to provide a viable appeals process for the decision to separate the

¹⁹⁶See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 child from the parents in which the parents are appreciably heard and their perspectives
2 sincerely considered.

3 2535. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
4 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
5 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.
6 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
7 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
8 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert
9 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
10 failed to conform to the aforementioned duty when the Defendants removed Plaintiffs
11 Mr. and Mrs. Smith from Plaintiff Newborn baby J.A.S. by ejecting Plaintiffs Mr. and Mrs.
12 Smith from St. Luke's property without reasonable suspicion of drug abuse by Plaintiff
13 Mrs. Smith or a court order to separate Newborn baby J.A.S. from his parents, and not
14 one Defendant provided a valid appeals process for the decision to separate them.

15 2536. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
16 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
17 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.
18 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
19 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
20 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert
21 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
22 actively and of their own volition, contacted Northampton County CYS, Monroe County
23 CYS, and the Bethlehem Police Department in a concerted effort to separate Plaintiff

1 Newborn baby J.A.S. from his parents Plaintiffs Mr. and Mrs. Smith and to deny a valid
2 appeals process for that separation by keeping the focus of the issue on the supposed
3 methamphetamine use and implying that there was no way to overcome the decision
4 that was made because the decision made was already final, as became evident when
5 Plaintiffs Mr. and Mrs. Smith were escorted off of Defendant St. Luke's Hospital's
6 property by police officers against their will and consent.

7 2537. Negligence (4): Because there was not a valid appeals process, Plaintiffs Mr. and
8 Mrs. Smith were in fact, separated from Plaintiff Newborn baby J.A.S. against their will
9 and consent and were left without control over the care of their son Newborn baby
10 J.A.S., including the ability to breastfeed Newborn baby J.A.S., have skin-to-skin
11 contact with Newborn baby J.A.S., and consent to Newborn baby J.A.S.'s medical
12 treatment.

13 2538. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
14 MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD,
15 Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD,
16 Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms.
17 Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms.
18 Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
19 Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's" conduct violated
20 Plaintiffs' rights under Pennsylvania common law negligence.

21 2539. Accordingly, and in connection with the alleged negligence of the Defendant
22 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
23 Entities be required to adopt a third-party training program which demonstrates

1 appropriate circumstances under which a child should be reasonably separated from its
2 natural parents, and the specific legal procedures to adhere to for such a separation to
3 take place, including the necessity for an impartial appeals process, as well, for when
4 the mechanism for an appeals process becomes available.

5 2540. Accordingly, and in connection with the alleged negligence of the Defendant
6 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
7 Persons be required to attend and pass a rigorous a third-party training program which
8 demonstrates appropriate circumstances under which a child should be reasonably
9 separated from its natural parents, and the specific legal procedures to adhere to for
10 such a separation to take place, including the necessity for an impartial appeals
11 process, as well, for when the mechanism for an appeals process becomes available.

12 2541. Accordingly, if a third-party cannot be found to render the appropriately rigorous
13 training course, then the Defendant Entities should create their own legal training
14 program which demonstrates appropriate circumstances under which a child should be
15 reasonably separated from its natural parents, and the specific legal procedures to
16 adhere to for such a separation to take place, including the necessity for an impartial
17 appeals process, as well, for when the mechanism for an appeals process becomes
18 available; and, before the created program is implemented, the program must be
19 approved by an appropriate court or federal agency for review; and, the program must
20 be implemented within 180 days of the valid judgment of this honorable Court.

21 2542. A Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
22 conduct, including but not limited to, emotional and psychological distress, pain and
23 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests

1 appropriate compensatory damages to account for PTSD therapies and other related
2 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
3 request an amount of \$84,800 in compensatory damages per Defendant.

4 2543. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
5 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
6 Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E.
7 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
8 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I.
9 Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve
10 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
11 "Hospital Leadership Team" and therefore, their ability to afford the appropriate training
12 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm
13 was actually caused to the current Plaintiffs Smith Family, and since harm is likely to
14 continue to harm future postpartum families, and because the acts of the Defendants
15 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
16 reckless and wanton manner, the Plaintiff respectfully requests the imposition of
17 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
18 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
19 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.
20 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
21 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
22 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert
23 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

1 to deter such Defendants from committing to such conduct in the future which violates
 2 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
 3 of \$1,000,000 in punitive damages per Defendants Ms. Dianne R. Jacobetz, MD, Mr.
 4 Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms.
 5 Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly
 6 A. Costello, DO, Mr. Gilberto I. Santiago, MD, and Ms. Patricia Bates, CNRP;
 7 \$5,000,000 per Defendants Mr. Patrick Philpot, DO, Ms. Chaminie Wheeler, MD, Mr.
 8 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and
 9 the “Hospital Leadership Team”; and \$10,000,000 per Defendants St. Luke’s Hospital,
 10 Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia M. Shultz, MD..
 11 2544. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 12 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 13 respectfully request a nominal judgment of \$1.00.

14 **XI. Negligence VIII**

15 Smith, et al. v. St. Luke’s Hospital, Onsite Neonatal, St. Luke’s Physician Group,

16 Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, & Ms. Dianne R.

17 Jacobetz, MD

18 2545. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
 19 or obligation recognized by the law, requiring the actor to conform to a certain standard
 20 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
 21 between the conduct and the resulting injury; and (4) actual loss or damage resulting to

1 the interests of another.¹⁹⁷

2 2546. Negligence (1): A private medical provider actor has a duty to convey true and
3 accurate medical information about a newborn baby to its parents.

4 2547. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, St. Luke's
5 Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, & Ms.
6 Dianne Jacobetz, MD, failed to conform to the aforementioned duty when in an effort to
7 force Plaintiffs Mr. and Mrs. Smith to stay at the hospital with Plaintiff Newborn baby
8 J.A.S. beyond when the Plaintiffs desired to remain, Defendants misinformed Mr. and
9 Mrs. Smith that Newborn baby J.A.S. needed to be removed to the NICU because of
10 breathing trouble (which was a newborn grunting to breastfeed), and Defendants never
11 informed Plaintiffs Mr. and Mrs. Smith, as Mr. and Mrs. Smith later discovered in
12 medical records, that Plaintiff Newborn baby J.A.S. was "in danger of falling into life-
13 threatening circumstances" if he were not admitted to the NICU for specialized care and
14 monitoring.

15 2548. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, St. Luke's
16 Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, & Ms.
17 Dianne Jacobetz, MD, actively and of their own volition, intentionally spoke to Plaintiffs
18 Mr. and Mrs. Smith one narrative about their newborn baby that he was by-and-large
19 healthy and fine, and that his admittance to the NICU was precautionary; however, the

¹⁹⁷ See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 narrative that was being written in the medical records of Plaintiffs Newborn baby J.A.S.
2 and Mrs. Smith was markedly different in tone and facts, instead making Plaintiff
3 Newborn baby J.A.S. out to be in more need of medical care than he actually required
4 or was at least being reported to require to Plaintiffs Mr. and Mrs. Smith.

5 2549. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
6 Newborn baby J.A.S. against their will and consent and were left without control over
7 the care of their son Newborn baby child J.A.S., including the ability to breastfeed
8 Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent
9 to Newborn baby J.A.S.'s medical treatment.

10 2550. Defendants St. Luke's Hospital, Onsite Neonatal, St. Luke's Physicians Group,
11 Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, and Ms. Dianne Jacobetz,
12 MD's conduct violated Plaintiffs' rights under Pennsylvania common law negligence.

13 2551. Accordingly, and in connection with the alleged negligence of the Defendant
14 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
15 Entities be required to adopt a third-party training program which demonstrates
16 appropriate circumstances under which a child should be reasonably separated from its
17 natural parents, and the specific legal procedures to adhere to for such a separation to
18 take place, and that employees, agents, and assigns of the Defendant Entities must be
19 consistent with the same narrative in the medical records of patients as when speaking
20 to or otherwise communicating with a patient or patient's parent or legal guardian.

21 2552. Defendants St. Luke's Hospital, Onsite Neonatal, St. Luke's Physicians Group,
22 Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, and Ms. Dianne Jacobetz,
23 MD's conduct violated Plaintiffs' rights under Pennsylvania common law negligence.

1 2553. Accordingly, and in connection with the alleged negligence of the Defendant
2 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
3 Persons be required to attend and pass a rigorous a third-party training program which
4 demonstrates appropriate circumstances under which a child should be reasonably
5 separated from its natural parents, and the specific legal procedures to adhere to for
6 such a separation to take place, and that employees, agents, and assigns of the
7 Defendant Entities must be consistent with the same narrative in the medical records of
8 patients as when speaking to or otherwise communicating with a patient or patient's
9 parent or legal guardian.

10 2554. Accordingly, if a third-party cannot be found to render the appropriately rigorous
11 training course, then the Defendant Entities should create their own legal training
12 program which demonstrates appropriate circumstances under which a child should be
13 reasonably separated from its natural parents, and the specific legal procedures to
14 adhere to for such a separation to take place, and that employees, agents, and assigns
15 of the Defendant Entities must be consistent with the same narrative in the medical
16 records of patients as when speaking to or otherwise communicating with a patient or
17 patient's parent or legal guardian; and, before the created program is implemented, the
18 program must be approved by an appropriate court or federal agency for review; and,
19 the program must be implemented within 180 days of the valid judgment of this
20 honorable Court.

21 2555. A Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
22 conduct, including but not limited to, emotional and psychological distress, pain and
23 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests

1 appropriate compensatory damages to account for PTSD therapies and other related
2 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
3 request an amount of \$84,800 in compensatory damages per Defendant.

4 2556. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
5 Neonatal, St. Luke's Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I.
6 Santiago, MD, and Ms. Dianne Jacobetz, MD, and therefore, their ability to afford the
7 appropriate training to avoid this egregious violation of the Pennsylvania Common Law,
8 and, since harm was actually caused to the current Plaintiffs Smith Family, and since
9 harm is likely to continue to harm future postpartum families, and because the acts of
10 the Defendants and their agents, assigns, or employees callously disregarded the
11 Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the
12 imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, St.
13 Luke's Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, and
14 Ms. Dianne Jacobetz, MD, to deter such Defendants from committing to such conduct in
15 the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs
16 respectfully request an amount of \$1,000,000 in punitive damages per Defendants Mr.
17 Gilberto I. Santiago, MD, and Ms. Dianne R. Jacobetz, MD.; \$5,000,000 per Defendants
18 Onsite Neonatal, St. Luke's Physician Group, and Ms. Chaminie Wheeler, DO; and
19 \$10,000,000 per Defendant St. Luke's Hospital.

20 2557. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
21 any actual injury despite the deprivation of their common law rights, the Plaintiffs
22 respectfully request a nominal judgment of \$1.00.

23 **XII. Negligence IX**

1 Smith, et al. v. St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,
 2 Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

3 2558. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
 4 or obligation recognized by the law, requiring the actor to conform to a certain standard
 5 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
 6 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
 7 the interests of another.¹⁹⁸

8 2559. Negligence (1): A private medical provider actor removing a newborn child from
 9 the custody of its parents has a duty to only do so with a court order or with reasonable
 10 suspicion of drug abuse on the part of the mother, and in the absence of either has a
 11 duty to allow both natural parents to be with the newborn baby.

12 2560. Negligence (2): Defendants St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr.
 13 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, & the "Hospital Leadership
 14 Team" failed to conform to the aforementioned duty when the Defendants removed
 15 Plaintiffs Mr. and Mrs. Smith from Plaintiff newborn baby J.A.S. by ejecting Mr. and Mrs.
 16 Smith from St. Luke's property against their will and consent without reasonable
 17 suspicion of drug abuse by Mrs. Smith or a court order to separate newborn baby J.A.S.
 18 from his parents, and not allow both parents back into the hospital NICU (Mr. Smith is

¹⁹⁸See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 still under a no trespass order under threat of arrest from the Bethlehem Police
2 Department).

3 2561. Negligence (3): Defendants St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr.
4 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, & the "Hospital Leadership
5 Team" actively and of their own volition, contacted Northampton County CYS, Monroe
6 County CYS, and the Bethlehem Police Department in a concerted effort to separate
7 Plaintiff newborn baby J.A.S. from his parents Plaintiffs Mr. and Mrs. Smith, and after
8 over 24-hours of time Plaintiff Mrs. Smith was allowed to be in the NICU with newborn
9 baby J.A.S., but Mr. Smith was still restricted from St. Luke's Hospital property under
10 threat of arrest.

11 2562. Negligence (4): Mr. and Mrs. Smith were in fact, separated from newborn baby
12 J.A.S. against their will and consent and were left without control over the care of their
13 newborn baby child J.A.S., including the ability to breastfeed newborn baby J.A.S., have
14 skin-to-skin contact with newborn baby J.A.S., and consent to newborn baby J.A.S.'s
15 medical treatment, a separation which continued for Mr. Smith for a period lasting some
16 time longer than 72 hours, and did not allow him to be in the NICU to be with his
17 postpartum wife and child during a particularly difficult time as a family.

18 2563. Defendants St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
19 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, & the "Hospital Leadership Team's" conduct
20 violated Plaintiffs' rights under Pennsylvania common law negligence.

21 2564. Accordingly, and in connection with the alleged negligence of the Defendant
22 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
23 Entities be required to adopt a third-party training program which demonstrates

1 appropriate circumstances under which a child should be reasonably separated from its
2 natural parents, and the specific legal procedures to adhere to for such a separation to
3 take place, including when it is and when it is not appropriate to remove parents from
4 the premises altogether and what the standard for allowing parents back on the property
5 to visit their newborn children in the NICU is if the parents have been ejected from the
6 property against their will and consent under threat of arrest.

7 2565. Accordingly, and in connection with the alleged negligence of the Defendant
8 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
9 Persons be required to attend and pass a rigorous a third-party training program which
10 demonstrates appropriate circumstances under which a child should be reasonably
11 separated from its natural parents, and the specific legal procedures to adhere to for
12 such a separation to take place, including when it is and when it is not appropriate to
13 remove parents from the premises altogether and what the standard for allowing
14 parents back on the property to visit their newborn children in the NICU is if the parents
15 have been ejected from the property against their will and consent under threat of
16 arrest.

17 2566. Accordingly, if a third-party cannot be found to render the appropriately rigorous
18 training course, then the Defendant Entities should create their own legal training
19 program which demonstrates appropriate circumstances under which a child should be
20 reasonably separated from its natural parents, and the specific legal procedures to
21 adhere to for such a separation to take place, including when it is and when it is not
22 appropriate to remove parents from the premises altogether and what the standard for
23 allowing parents back on the property to visit their newborn children in the NICU is if the

1 parents have been ejected from the property against their will and consent under threat
2 of arrest; and, before the created program is implemented, the program must be
3 approved by an appropriate court or federal agency for review; and, the program must
4 be implemented within 180 days of the valid judgment of this honorable Court.

5 2567. Accordingly, and in connection with the alleged negligence of the Defendant
6 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all appropriate
7 monetary relief, compensatory and punitive, as the Court sees fit.

8 2568. A Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
9 conduct, including but not limited to, emotional and psychological distress, pain and
10 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
11 appropriate compensatory damages to account for PTSD therapies and other related
12 treatments as they have been and will continue to be necessary Plaintiffs respectfully
13 request an amount of \$84,800 in compensatory damages per Defendant.

14 2569. Given the substantial wealth of the Defendants St. Luke's Hospital, Mr. Steve
15 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, & the
16 "Hospital Leadership Team", and therefore, their ability to afford the appropriate training
17 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm
18 was actually caused to the current Plaintiffs Smith Family, and since harm is likely to
19 continue to harm future postpartum families, and because the acts of the Defendants
20 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
21 reckless and wanton manner, the Plaintiff respectfully requests the imposition of
22 punitive damages on Defendants St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr.
23 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, & the "Hospital Leadership

Team”, to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$5,000,000 in punitive damages per Defendants Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”; and \$10,000,000 per Defendant St. Luke’s Hospital.

2570. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XIII. Negligence X

Smith, et al. v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,

MD, & Ms. Cynthia Shultz, MD

2571. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting to the interests of another.¹⁹⁹

2572. Negligence (1): A private medical provider actor removing a newborn child from the custody of its parents has a duty to only do so with a court order or with reasonable

¹⁹⁹See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 suspicion of drug abuse on the part of the mother, and without either the former or the
2 latter on behalf of Defendant actors, the parents of such allegations have a valid logical
3 and emotional basis for contesting such allegations, and have a right to do so without
4 being painted as people capable of such violence that they should be removed from
5 hospital property under threat of arrest while their newborn baby resides in a NICU.

6 2573. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
7 Teresa Marlino, MD, & Ms. Cynthia Shultz, MD failed to conform to the aforementioned
8 duty when the Defendants removed Plaintiffs Mr. and Mrs. Smith from Plaintiff Newborn
9 baby J.A.S. by ejecting Plaintiffs Mr. and Mrs. Smith from Defendant St. Luke's Hospital
10 property against their will and consent under threat of arrest without reasonable
11 suspicion of drug abuse by Plaintiff Mrs. Smith or a court order to separate Plaintiff
12 Newborn baby J.A.S. from his parents, by proceeding to paint the color of violence on
13 the Plaintiff parents Mr. and Mrs. Smith to both private parties and state officials to the
14 degree that state officials removed Plaintiffs Mr. and Mrs. Smith from Defendant St.
15 Luke's Hospital property under threat of arrest, and other state officials opened up an
16 erroneous investigation for over a month into the supposed violent nature of the Smith
17 Family Parents.

18 2574. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
19 Teresa Marlino, MD, & Ms. Cynthia Shultz, MD actively and of their own volition,
20 contacted Northampton County CYS, Monroe County CYS, and the Bethlehem Police
21 Department in a concerted effort to separate Plaintiff Newborn baby J.A.S. from his
22 parents Plaintiffs Mr. and Mrs. Smith, during which process the Defendants portrayed
23 Plaintiffs Mr. and Mrs. Smith as people who had acted in a fashion so violent towards

1 Defendant hospital agents, employees, and assigns that Plaintiffs Mr. and Mrs. Smith
2 were locked out of the NICU, which was guarded against their presence by numerous
3 hospital security, removed from Defendant St. Luke's Hospital property against their will
4 and consent under threat of arrest, and then had over a month long investigation
5 opened into the nature of the supposed abusive nature alleged against Plaintiffs Mr. and
6 Mrs. Smith by yet another state entity.

7 2575. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
8 Newborn baby J.A.S. against their will and consent and were left without control over
9 the care of their son Newborn baby J.A.S., including the ability to breastfeed Newborn
10 baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent to
11 Newborn baby J.A.S.'s medical treatment.

12 2576. Neither Plaintiff Mr. nor Mrs. Smith acted in a violent fashion throughout the
13 entirety of the stressful situation of their child being seized by the hospital into the NICU
14 and held against the Plaintiff's will and consent, custody, and care by the concerted
15 efforts of the Defendants.

16 2577. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
17 MD, & Ms. Cynthia Shultz, MD's conduct violated Plaintiffs' rights under Pennsylvania
18 common law negligence.

19 2578. Accordingly, and in connection with the alleged negligence of the Defendant
20 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
21 Entities be required to adopt a third-party training program which demonstrates
22 appropriate circumstances under which a child should be reasonably separated from its
23 natural parents, and the specific legal procedures to adhere to for such a separation to

1 take place, including accurately portraying the demeanor of the parents of the newborn
2 child as non-violent, so long as they did not act in a violent manner.

3 2579. Accordingly, and in connection with the alleged negligence of the Defendant
4 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
5 Persons be required to attend and pass a rigorous a third-party training program which
6 demonstrates appropriate circumstances under which a child should be reasonably
7 separated from its natural parents, and the specific legal procedures to adhere to for
8 such a separation to take place, including accurately portraying the demeanor of the
9 parents of the newborn child as non-violent, so long as they did not act in a violent
10 manner.

11 2580. Accordingly, if a third-party cannot be found to render the appropriately rigorous
12 training course, then the Defendant Entities should create their own legal training
13 program which demonstrates appropriate circumstances under which a child should be
14 reasonably separated from its natural parents, and the specific legal procedures to
15 adhere to for such a separation to take place, including accurately portraying the
16 demeanor of the parents of the newborn child as non-violent, so long as they did not act
17 in a violent manner; and, before the created program is implemented, the program must
18 be approved by an appropriate court or federal agency for review; and, the program
19 must be implemented within 180 days of the valid judgment of this honorable Court.

20 2581. A Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
21 conduct, including but not limited to, emotional and psychological distress, pain and
22 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
23 appropriate compensatory damages to account for PTSD therapies and other related

1 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
2 request an amount of \$84,800 in compensatory damages per Defendant.

3 2582. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
4 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, & Ms. Cynthia Shultz, MD, and
5 therefore, their ability to afford the appropriate training to avoid this egregious violation
6 of the Pennsylvania Common Law, and, since harm was actually caused to the current
7 Plaintiffs Smith Family, and since harm is likely to continue to harm future postpartum
8 families, and because the acts of the Defendants and their agents, assigns, or
9 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
10 the Plaintiff respectfully requests the imposition of punitive damages on Defendants St.
11 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, & Ms. Cynthia
12 Shultz, MD, to deter such Defendants from committing to such conduct in the future
13 which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully
14 request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's
15 Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, & Ms. Cynthia Shultz,
16 MD.

17 2583. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
18 any actual injury despite the deprivation of their common law rights, the Plaintiffs
19 respectfully request a nominal judgment of \$1.00.

20 **XIV. Negligence XI**

21 Smith, et al. v. St. Luke's Hospital, & Hospital Social Worker "Vanessa"

22 2584. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty

1 or obligation recognized by the law, requiring the actor to conform to a certain standard
2 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
3 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
4 the interests of another.²⁰⁰

5 2585. Negligence (1): A private medical provider actor removing a newborn child from
6 the custody of its parents has a duty to not increase the amount of mental anguish of
7 the parents by telling the parents that they retain rights to their child while the parents
8 are routinely witnessing parental rights being taken away or extinguished by that very
9 Defendant actor.

10 2586. Negligence (2): Defendants St. Luke's Hospital and Hospital Social Worker
11 "Vanessa" failed to conform to the aforementioned duty when the Defendants attempted
12 to reaffirm to Plaintiff parents Mr. and Mrs. Smith that they had care and control over the
13 medical decisions and general welfare of their child, while simultaneously having the
14 parents removed from the property, having parental consent continually denied in favor
15 of Defendants' desires, Plaintiff Mr. Smith not being allowed to visit his child in the NICU
16 after April 9th at all, around the clock guarding of Plaintiff Mrs. Smith while she was in
17 the NICU, and not being able to leave the hospital with their child.

18 2587. Negligence (3): Defendants St. Luke's Hospital and Hospital Social Worker
19 "Vanessa" actively and of her own volition, communicated to Plaintiff Mrs. Smith, upon

²⁰⁰See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 returning to the NICU to care for Plaintiff Newborn baby J.A.S. that Mrs. Smith had
2 “custody”, including the right to make decisions concerning the health and well-being of
3 Newborn baby J.A.S. despite the fact that under the current circumstances and
4 atmosphere Plaintiff Mrs. Smith clearly did not have custody of her child, nor the right to
5 make decisions for Plaintiff Newborn baby J.A.S. that the Defendants did not 100%
6 agree with without risk of ejection from the NICU and loss of access to Plaintiff Newborn
7 baby J.A.S. again.

8 2588. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
9 Newborn baby J.A.S. against their will and consent and were left without control over
10 the care of their son Newborn baby J.A.S., including the ability to breastfeed Newborn
11 baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent to
12 Newborn baby J.A.S.’s medical treatment.

13 2589. Defendants St. Luke’s Hospital and Hospital Social Worker “Vanessa’s” conduct
14 violated Plaintiffs’ rights under Pennsylvania common law negligence.

15 2590. Accordingly, and in connection with the alleged negligence of the Defendant
16 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
17 Entities be required to adopt a third-party training program which demonstrates
18 appropriate circumstances under which a child should be reasonably separated from its
19 natural parents, and the specific legal procedures to adhere to for such a separation to
20 take place, including how not to inflict additional trauma by making statements that are
21 contrary to the reality facing the parents.

22 2591. Accordingly, and in connection with the alleged negligence of the Defendant
23 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant

1 Persons be required to attend and pass a rigorous a third-party training program which
2 demonstrates appropriate circumstances under which a child should be reasonably
3 separated from its natural parents, and the specific legal procedures to adhere to for
4 such a separation to take place, including how not to inflict additional trauma by making
5 statements that are inverse to the reality facing the parents.

6 2592. Accordingly, if a third-party cannot be found to render the appropriately rigorous
7 training course, then the Defendant Entities should create their own legal training
8 program which demonstrates appropriate circumstances under which a child should be
9 reasonably separated from its natural parents, and the specific legal procedures to
10 adhere to for such a separation to take place, including how not to inflict additional
11 trauma by making statements that are contrary to the reality facing the parents; and,
12 before the created program is implemented, the program must be approved by an
13 appropriate court or federal agency for review; and, the program must be implemented
14 within 180 days of the valid judgment of this honorable Court.

15 2593. A Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
16 conduct, including but not limited to, emotional and psychological distress, pain and
17 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
18 appropriate compensatory damages to account for PTSD therapies and other related
19 treatments as they have been and will continue to be necessary Plaintiffs respectfully
20 request an amount of \$84,800 in compensatory damages per Defendant.

21 2594. Given the substantial wealth of the Defendant St. Luke's Hospital, and therefore,
22 its ability to afford the appropriate training to avoid this egregious violation of the
23 Pennsylvania Common Law, and, since harm was actually caused to the current

Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on Defendant St. Luke's Hospital, to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendant Hospital Social Worker "Vanessa"; and \$10,000,000 per Defendant St. Luke's Hospital.

2595. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XV. Negligence XII

Smith, et al. v. St. Luke's Hospital, "Security Guard 'Freddy'", Security Guard 'Joe'", Security Guard 'Nate'" "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

2596. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting to

1 the interests of another.²⁰¹

2 2597. Negligence (1): A private medical provider actor placing security guards to watch
3 a mother, including during breastfeeding, has a duty to use security staff which identifies
4 with the female gender.

5 Negligence (2): Defendants St. Luke's Hospital, "Security Guard 'Freddy'", "Security
6 Guard 'Nate'" "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
7 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman
8 & the "Hospital Leadership Team" failed to conform to the aforementioned duty when
9 the Defendants placed around the clock male security guards to observe Plaintiff Mrs.
10 Smith while she was in the NICU from when she was allowed to return to be with
11 Newborn baby J.A.S. until Plaintiffs Mr. Smith and Newborn baby J.A.S. were
12 discharged two days later.

13 2598. Negligence (3): Defendants St. Luke's Hospital, "Security Guard 'Freddy'",
14 "Security Guard 'Joe'", "Security Guard 'Nate'" "Security Supervisor 'Unknown'", "Head
15 of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
16 Darla Frack, Ms. Dawn Hoffman & the "Hospital Leadership Team" actively and of their
17 own volition, placed male security guards around the clock at Plaintiff Newborn baby
18 J.A.S.'s NICU room whenever Plaintiff Mrs. Smith was present, and who routinely
19 followed Plaintiff Mrs. Smith to the bathroom down the hall.

²⁰¹ See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2599. Negligence (4): Mrs. Smith felt humiliated, embarrassed, helpless, and ashamed
2 to have a male security guard constantly monitoring her including when she breastfed
3 Plaintiff Newborn baby J.A.S.; such actions also prevented skin-to-skin contact with
4 Newborn baby J.A.S. given the aforementioned emotions elicited by the presence of the
5 male security guard; Plaintiff Mr. Smith felt humiliated, embarrassed, helpless, and
6 ashamed to have a male security guard constantly monitoring his wife, including while
7 she breastfed.

8 2600. Defendants St. Luke's Hospital, "Security Guard 'Freddy'", "Security Guard 'Joe'",
9 "Security Guard 'Nate'", "Security Supervisor 'Unknown'", "Head of Hospital Security
10 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
11 Dawn Hoffman & the "Hospital Leadership Team's" conduct violated Plaintiffs' rights
12 under Pennsylvania common law negligence.

13 2601. Accordingly, and in connection with the alleged negligence of the Defendant
14 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
15 a third-party training program which demonstrates appropriate circumstances under
16 which a child should be reasonably separated from its natural parents, and the specific
17 legal procedures to adhere to for such a separation to take place, including that if a
18 presence of security is deemed required by the private medical provider that such a
19 presence must be an individual who identifies with the female gender.

20 2602. Accordingly, and in connection with the alleged negligence of the Defendant
21 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
22 attend and pass a rigorous a third-party training program which demonstrates
23 appropriate circumstances under which a child should be reasonably separated from its

1 natural parents, and the specific legal procedures to adhere to for such a separation to
2 take place, including that if a presence of security is deemed required by the private
3 medical provider that such a presence must be an individual who identifies with the
4 female gender.

5 2603. Accordingly, if a third-party cannot be found to render the appropriately rigorous
6 training course, then the Defendant Entities should create their own legal training
7 program which demonstrates appropriate circumstances under which a child should be
8 reasonably separated from its natural parents, and the specific legal procedures to
9 adhere to for such a separation to take place, including that if a presence of security is
10 deemed required by the private medical provider that such a presence must be an
11 individual who identifies with the female gender; and, before the created program is
12 implemented, the program must be approved by an appropriate court or federal agency
13 for review; and, the program must be implemented within 180 days of the valid
14 judgment of this honorable Court.

15 2604. A Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
16 conduct, including but not limited to, emotional and psychological distress, pain and
17 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
18 appropriate compensatory damages to account for PTSD therapies and other related
19 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
20 request an amount of \$84,800 in compensatory damages per Defendant.

21 2605. Given the substantial wealth of the Defendants St. Luke's Hospital, "Head of
22 Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
23 Darla Frack, Ms. Dawn Hoffman & the "Hospital Leadership Team", and therefore, their

ability to afford the appropriate training to avoid this egregious violation of the Pennsylvania Common Law, and, since harm was actually caused to the current Plaintiffs Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on Defendants St. Luke's Hospital, "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman & the "Hospital Leadership Team," to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants "Security Guard 'Freddy'", "Security Guard 'Joe'", and "Security Guard 'Nate'"; \$5,000,000 per Defendants "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"; and \$10,000,000 per Defendant St. Luke's Hospital.

2606. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XVI. Negligence XIII

Mrs. Smith v. St. Luke's Hospital

2607. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard

1 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
2 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
3 the interests of another.²⁰²

4 2608. Negligence (1): A private medical provider actor has a duty to provide postpartum
5 mothers with a child in a NICU with reasonable accommodations for comfort, especially
6 if the postpartum mother has a disability that prevents the function of ambulating
7 normally.

8 2609. Negligence (2): Defendant St. Luke's Hospital failed to conform to the
9 aforementioned duty when the Defendant failed to provide Plaintiff Mrs. Smith with a
10 place to sleep in the NICU; no bathroom in Newborn baby J.A.S.'s NICU pod, forcing
11 Plaintiff Mrs. Smith to use a bathroom approximately 70-80 ft. away (given injuries to the
12 vaginal region a postpartum mother use a restroom for more than just excretion of
13 waste); not a single handicap accessible door in all of the NICU which could be opened
14 by Plaintiff Mrs. Smith alone without the help of others while using a wheelchair; and no
15 privacy to check on postpartum functions within the NICU pod because of guard and
16 nurse intrusions as well as one glass panel acting as a wall, on the other side of which
17 sat the male security guards and typically one or more nurses.

²⁰²See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2610. Negligence (3): Defendant St. Luke's Hospital actively and of their own volition,
2 did not provide any reasonable accommodations for a postpartum mother attending to
3 her newborn child in a NICU who had an obvious difficulty ambulating.

4 2611. Negligence (4): Plaintiff Mrs. Smith suffered both mentally and physically from
5 the lack of reasonable accommodations provided to Plaintiff Mrs. Smith, which are, but
6 not limited to: additional knee pain than Mrs. Smith typically feels, pelvic pain, increased
7 and prolonged vaginal bleeding, depression and general feeling of disgust from not
8 being able to regularly tend to her own postpartum needs, back and leg pain, insomnia
9 from not having place to lay down, fatigue, and body aches.

10 2612. Plaintiff Mrs. Smith has a pre-existing knee injury which has required surgery in
11 the past for which she wears an obviously recognizable knee brace whenever she
12 walks; and, two of her three knee surgeries were performed at St. Luke's Hospital's
13 facilities.

14 2613. Defendant St. Luke's Hospital's conduct violated Plaintiffs' rights under
15 Pennsylvania common law negligence.

16 2614. Accordingly, and in connection with the alleged negligence of the Defendant
17 parties, Plaintiff Mrs. Smith requests all Defendant Entities be required to adopt a third-
18 party training program which demonstrates the appropriate circumstances reasonable
19 accommodations should be offered to a postpartum mother, and what those reasonable
20 accommodations should reasonably include.

21 2615. Accordingly, and in connection with the alleged negligence of the Defendant
22 parties, Plaintiff Mrs. Smith requests all Defendant Persons be required to attend and
23 pass a rigorous a third-party training program which demonstrates the appropriate

1 circumstances reasonable accommodations should be offered to a postpartum mother,
2 and what those reasonable accommodations should reasonably include.

3 2616. Accordingly, if a third-party cannot be found to render the appropriately rigorous
4 training course, then the Defendant Entities should create their own legal training
5 program on when it is it is appropriate to offer reasonable accommodations to a
6 postpartum disabled mother and what the nature of those accommodations should
7 reasonably include; and, before the created program is implemented, the program must
8 be approved by an appropriate court or federal agency for review; and, the program
9 must be implemented within 180 days of the valid judgment of this honorable Court.

10 2617. Plaintiff Mrs. Smith suffered substantial harm as a result of Defendants' conduct,
11 including but not limited to, emotional and psychological distress, pain and suffering,
12 fear, humiliation, chagrin, and anguish; and, therefore respectfully requests appropriate
13 compensatory damages to account for PTSD therapies and other related treatments as
14 they have been and will continue to be necessary; Plaintiff respectfully requests an
15 amount of \$59,500 in compensatory damages per Defendant.

16 2618. Given the substantial wealth of the Defendants St. Luke's Hospital, and
17 therefore, their ability to afford the appropriate training to avoid this egregious violation
18 of the Pennsylvania Common Law, and, since harm was actually caused to the current
19 Plaintiffs Smith Family, and since harm is likely to continue to harm future postpartum
20 mothers, and because the acts of the Defendant and their agents, assigns, or
21 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
22 the Plaintiff respectfully requests the imposition of punitive damages on Defendant St.
23 Luke's Hospital to deter such Defendants from committing to such conduct in the future

1 which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully
 2 request an amount of \$10,000,000 in punitive damages per Defendant St. Luke's
 3 Hospital.

4 2619. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered
 5 any actual injury despite the deprivation of her common law rights, the Plaintiff
 6 respectfully requests a nominal judgment of \$1.00.

7 **XVII. Negligence XIV**

8 Smith, et al. v. Monroe County, Ms. Adelaide W. Grace, Mr. Tim Shaw & Mr. Jorge
 9 Manteria

10 2620. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
 11 or obligation recognized by the law, requiring the actor to conform to a certain standard
 12 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
 13 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
 14 the interests of another.²⁰³

15 2621. Negligence (1): A state actor investigating parents for illegal substance abuse
 16 has a duty to only do so with a court order or with reasonable suspicion of drug abuse,
 17 and, as well, has a duty not to reject and repudiate multiple sources of evidence
 18 exculpating the parents suspected of substance abuse.

²⁰³See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2622. Negligence (2): Defendants Monroe County through its Offices of Children and
2 Youth Services, and its agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim
3 Shaw, and Mr. Jorge Manteria failed to conform to the aforementioned duties when the
4 Defendants ignored critical facts which would have allowed them to immediately
5 surmise that Plaintiff Mrs. Smith did not consume illegal methamphetamine, including
6 but not limited to: (1) neither Plaintiff Mrs. Smith nor Plaintiff Newborn baby J.A.S.
7 tested positive for methamphetamine while at Defendant St. Luke's Hospital; (2) the
8 umbilical cord that connected Plaintiff Mrs. Smith to Plaintiff Newborn baby J.A.S. did
9 not test positive for methamphetamine; (3) neither Plaintiff Mrs. Smith nor Plaintiff
10 Newborn baby J.A.S. suffered any signs or symptoms of methamphetamine withdrawal;
11 (4) Monroe County CYS conducting their own urinary drug screen before Plaintiff Mrs.
12 Smith left the hospital which also tested negative for methamphetamine; (5) an
13 inspection of the home environment by Defendant Mr. Jorge Manteria who was satisfied
14 that the home was a safe place to bring a newborn baby; (6) Defendant Mr. Jorge
15 Manteria did not suspect that anyone in the Smith Family home consumed illegal
16 methamphetamine; (7) more than one home visit by Defendant Mr. Jorge Manteria who
17 verbally concluded time and again that the Smith Family home was a safe environment
18 for children; (8) access to Plaintiff Mrs. Smith's medical records which documented the
19 fact that Mrs. Smith was legally prescribed Vyvanse, an amphetamine that had been
20 approved by three independent doctors for use during her pregnancy; (9) that neither
21 Plaintiffs Mr. nor Mrs. Smith were individuals of any violent nature; (10) and ultimately
22 without reasonable suspicion of drug abuse by Plaintiffs Mr. or Mrs. Smith the
23 investigation into the Smith Family lasted week after week.

1 2623. Negligence (3): Defendants Monroe County through its Offices of Children and
2 Youth Services, and its agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim
3 Shaw, and Mr. Jorge Manteria actively and of their own volition, continued to harass the
4 Smith Family through repeated home visits, multiple requests for drug tests, and by
5 invading the privacy, sanctity, and feelings of security within the household despite
6 copious amounts of evidence that neither Plaintiffs Mr. or Mrs. Smith presented a
7 danger to Plaintiff Newborn baby J.A.S. or any of their other children.

8 2624. Negligence (4): Mr. and Mrs. Smith were investigated by the state agency
9 Monroe County Office of Children and Youth services costing unnecessary attorney's
10 fees for each home visit by Defendant Mr. Manteria, and mental anguish and anxiety
11 related to each home visit by Children and Youth Services which has manifested in
12 physical symptoms, as well as all fees and costs relating to present and future
13 psychological counseling for Plaintiffs Mr. and Mrs. Smith.

14 2625. Defendants Monroe County through its Offices of Children and Youth Services,
15 and its agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim Shaw, and Mr.
16 Jorge Manteria's conduct violated Plaintiffs' rights under Pennsylvania common law
17 negligence.

18 2626. Accordingly, and in connection with the alleged negligence of the Defendant
19 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
20 Monroe County Children and Youth Services be required to adopt a third-party training
21 program which demonstrates appropriate circumstances under which a child should be
22 reasonably separated from its natural parents, and the specific legal procedures to
23 adhere to for such a separation to take place, including when it is appropriate to

1 terminate an investigation, as well as the importance of not rejecting or repudiating
2 evidence that exculpates that accused and should lead to a case being closed much
3 sooner than is required by statute.

4 2627. Accordingly, and in connection with the alleged negligence of the Defendant
5 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
6 Persons be required to attend and pass a rigorous a third-party training program which
7 demonstrates appropriate circumstances under which a child should be reasonably
8 separated from its natural parents, and the specific legal procedures to adhere to for
9 such a separation to take place, including when it is appropriate to terminate an
10 investigation, as well as not rejecting or repudiating evidence that exculpates that
11 accused and should lead to a case being closed much sooner than is required by
12 statute.

13 2628. Accordingly, if a third-party cannot be found to render the appropriately rigorous
14 training course, then the Defendant Entities should create their own legal training
15 program which demonstrates appropriate circumstances under which a child should be
16 reasonably separated from its natural parents, and the specific legal procedures to
17 adhere to for such a separation to take place, including when it is appropriate to
18 terminate an investigation, as well as not rejecting or repudiating evidence that
19 exculpates that accused and should lead to a case being closed much sooner than is
20 required by statute; and, before the created program is implemented, the program must
21 be approved by an appropriate court or federal agency for review; and, the program
22 must be implemented within 180 days of the valid judgment of this honorable Court.

1 2629. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
2 conduct, including but not limited to, emotional and psychological distress, pain and
3 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
4 appropriate compensatory damages to account for PTSD therapies and other related
5 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
6 request an amount of \$84,800 in compensatory damages per Defendant.

7 2630. Defendant Monroe County through its employees, agents, or assigns, Ms.
8 Adelaide W. Grace, and Mr. Tim Shaw, had legal obligations to accurately enforce the
9 law, and, since harm was actually caused to the current Plaintiffs Smith Family, and
10 since harm is likely to continue to harm future postpartum mothers, and because the
11 acts of the Defendant and their agents, assigns, or employees callously disregarded the
12 Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the
13 imposition of punitive damages on Defendants Monroe County, Ms. Adelaide W. Grace,
14 and Mr. Tim Shaw to deter such Defendants from committing to such conduct in the
15 future which violates Commonwealth of Pennsylvania Common Law Plaintiffs
16 respectfully request an amount of \$1,000,000 in punitive damages per Defendants Mr.
17 Tim Shaw, and Mr. Jorge Manteria; \$5,000,000 per Defendant Ms. Adelaide W. Grace;
18 and \$10,000,000 per Defendant Monroe County.

19 2631. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered
20 any actual injury despite the deprivation of her common law rights, the Plaintiff
21 respectfully requests a nominal judgment of \$1.00.

22 **XVIII. Negligence XV**

1 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians
 2 Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and
 3 Gynecology Associates, Monroe County, Northampton County, Ms. Adelaide
 4 Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
 5 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms.
 6 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe,
 7 MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello,
 8 DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates,
 9 CRNP, Ms. Kimberly A. Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of
 10 Hospital Security 'Unknown', Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
 11 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

12 2632. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
 13 or obligation recognized by the law, requiring the actor to conform to a certain standard
 14 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
 15 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
 16 the interests of another.²⁰⁴

²⁰⁴ See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933,
 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir.
 1993).

1 2633. Negligence (1): A private medical provider actor, as well as state actors
2 considering removing a newborn child from the custody of its parents have a duty to do
3 so only if actual and imminent harm will come to the child by allowing the child to be
4 cared for by its parents, and if no actual and imminent harm is present then all
5 Defendant parties had an affirmative duty to do their best to keep the family unit intact.

6 2634. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
7 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
8 and Gynecology Associates, Monroe County, Northampton County, Ms. Adelaide
9 Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick
10 Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
11 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
12 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
13 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
14 Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
15 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
16 and the "Hospital Leadership Team," failed to conform to the aforementioned duty when
17 instead of affirmatively acting to keep the Plaintiff Smith Family unit intact where no
18 actual or imminent harm would come to their child due to their presence, the
19 Defendants did the inverse and either allowed or advocated for the separation of
20 Plaintiff Newborn baby J.A.S. from his parents.

21 2635. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
22 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
23 and Gynecology Associates, Monroe County, Northampton County, Ms. Adelaide

1 Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick
2 Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
3 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
4 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
5 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
6 Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
7 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
8 the "Hospital Leadership Team," of which Defendants actively and of their own volition,
9 while others passively and of their own volition, contacted Northampton County CYS,
10 Monroe County CYS, and the Bethlehem Police Department in a concerted effort to
11 separate Plaintiff Newborn baby J.A.S. from his parents Plaintiffs Mr. and Mrs. Smith, by
12 not just rejecting, but repudiating the copious amount of evidence that Plaintiff Mrs.
13 Smith had not ever consumed methamphetamine, and that neither Plaintiffs Mr. nor
14 Mrs. Smith were of a violent character.

15 2636. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
16 Newborn baby J.A.S. against their will and consent and were left without control over
17 the care of their son Plaintiff Newborn baby J.A.S., including the ability to breastfeed
18 Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent
19 to Newborn baby J.A.S.'s medical treatment.

20 2637. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
21 Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and
22 Gynecology Associates, Monroe County, Northampton County, Ms. Adelaide Grace, Mr.
23 Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO,

1 Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr.
2 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
3 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms.
4 Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP,
5 “Security Supervisor ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Steve
6 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the
7 “Hospital Leadership Team’s” conduct violated Plaintiffs’ rights under Pennsylvania
8 common law negligence.

9 2638. Accordingly, and in connection with the alleged negligence of the Defendant
10 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
11 Entities be required to adopt a third-party training program which demonstrates
12 appropriate circumstances under which a child should be reasonably separated from its
13 natural parents, and the specific legal procedures to adhere to for such a separation to
14 take place, including how to effectively invoke the affirmative duty to keep a family with
15 a newborn child together unless an actual and/or imminent threat exists to justify
16 separation, or as prescribed by law.

17 2639. Accordingly, and in connection with the alleged negligence of the Defendant
18 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
19 Persons be required to attend and pass a rigorous a third-party training program which
20 demonstrates appropriate circumstances under which a child should be reasonably
21 separated from its natural parents, and the specific legal procedures to adhere to for
22 such a separation to take place, including how to effectively invoke the affirmative duty

1 to keep a family with a newborn child together unless an actual and/or imminent threat
2 exists to justify separation, or as prescribed by law.

3 2640. Accordingly, if a third-party cannot be found to render the appropriately rigorous
4 training course, then the Defendant Entities should create their own legal training
5 program which demonstrates appropriate circumstances under which a child should be
6 reasonably separated from its natural parents, and the specific legal procedures to
7 adhere to for such a separation to take place, including how to effectively invoke the
8 affirmative duty to keep a family with a newborn child together unless an actual and/or
9 imminent threat exists to justify separation, or as prescribed by law; and, before the
10 created program is implemented, the program must be approved by an appropriate
11 court or federal agency for review; and, the program must be implemented within 180
12 days of the valid judgment of this honorable Court.

13 2641. A Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
14 conduct, including but not limited to, emotional and psychological distress, pain and
15 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
16 appropriate compensatory damages to account for PTSD therapies and other related
17 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
18 request an amount of \$84,800 in compensatory damages per Defendant.

19 2642. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
20 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates
21 Group, St. Luke's Obstetrics and Gynecology Associates, Monroe County, Northampton
22 County, Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia
23 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD,

1 Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD,
2 Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr.
3 Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms.
4 Kimberly A. Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security
5 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
6 Dawn Hoffman, the "Hospital Leadership Team," and therefore, their ability to afford the
7 appropriate training to avoid this egregious violation of the Pennsylvania Common Law,
8 and, since harm was actually caused to the current Plaintiffs Smith Family, and since
9 harm is likely to continue to harm future postpartum families, and because the acts of
10 the Defendants and their agents, assigns, or employees callously disregarded the
11 Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the
12 imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
13 OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St.
14 Luke's Obstetrics and Gynecology Associates, Monroe County, Northampton County,
15 Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD,
16 Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
17 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
18 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
19 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
20 Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
21 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
22 the "Hospital Leadership Team," to deter such Defendants from committing to such
23 conduct in the future which violates Commonwealth of Pennsylvania Common Law

Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants Mr. Tim Shaw, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Patricia Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP; \$5,000,000 per Defendants St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Adelaide Grace, Mr. Patrick Philpot, DO, Ms. Chaminie Wheeler, DO, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Monroe County, Northampton County, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

2643. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XIX. Negligence XVI

Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe,

1 MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello,
 2 DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates,
 3 CRNP, & Ms. Kimberly A. Nardis, CRNP

4 2644. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
 5 or obligation recognized by the law, requiring the actor to conform to a certain standard
 6 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
 7 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
 8 the interests of another.²⁰⁵

9 2645. Negligence (1): A private medical provider actor has a duty not to ignore the will
 10 and consent of that child's parents concerning medical applications and procedures for
 11 their child.

12 2646. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
 13 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
 14 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
 15 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
 16 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
 17 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
 18 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.

²⁰⁵ See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 Kimberly A. Nardis, CRNP, failed to conform to the aforementioned duty because when
2 Plaintiffs Mr. and Mrs. Smith withdrew consent for the treatment of newborn baby
3 J.A.S., the Defendants physically separated Plaintiffs Mr. and Mrs. Smith from Plaintiff
4 Newborn baby J.A.S. by having the Bethlehem Township Police eject Plaintiffs Mr. and
5 Mrs. Smith from Defendant St. Luke's Hospital's property without reasonable suspicion
6 of drug abuse by Plaintiff Mrs. Smith or a court order to separate Plaintiff Newborn baby
7 J.A.S. from his parents under threat of arrest for trespassing, and Defendants thereafter
8 medically treated Plaintiffs Newborn baby J.A.S. against the will and without the consent
9 of his parents, Plaintiffs Mr. & Mrs. Smith, who were denied any opportunity for a
10 second medical opinion.

11 2647. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
12 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
13 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
14 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
15 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
16 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
17 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.
18 Kimberly A. Nardis, CRNP actively and of their own volition, continued to perform tests,
19 treatments, and procedures on Plaintiff Newborn baby J.A.S. against the consent and
20 will of his parents.

21 2648. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
22 Newborn baby J.A.S. against their will and consent and were left without consent or
23 control over the care of their son Newborn baby J.A.S., including the ability to

1 breastfeed Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S.,
2 and consent to Newborn baby J.A.S.'s medical treatment.

3 2649. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
4 Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and
5 Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick
6 Philpot, DO, Ms. DianneR. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
7 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
8 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
9 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
10 Nardis, CRNP's conduct violated Plaintiffs' rights under Pennsylvania common law
11 negligence.

12 2650. Accordingly, and in connection with the alleged negligence of the Defendant
13 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
14 Entities be required to adopt a third-party training program which demonstrates
15 appropriate circumstances under which a child should be reasonably separated from its
16 natural parents, and the specific legal procedures to adhere to for such a separation to
17 take place, including when it is appropriate to relinquish a child to its birth parents and to
18 cease all medical treatments as the parents see fit.

19 2651. Accordingly, and in connection with the alleged negligence of the Defendant
20 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
21 Persons be required to attend and pass a rigorous a third-party training program which
22 demonstrates appropriate circumstances under which a child should be reasonably
23 separated from its natural parents, and the specific legal procedures to adhere to for

1 such a separation to take place, including when it is appropriate to relinquish a child to
2 its birth parents and to cease all medical treatments as the parents see fit.

3 2652. Accordingly, if a third-party cannot be found to render the appropriately rigorous
4 training course, then the Defendant Entities should create their own legal training
5 program which demonstrates appropriate circumstances under which a child should be
6 reasonably separated from its natural parents, and the specific legal procedures to
7 adhere to for such a separation to take place, including when it is appropriate to
8 relinquish a child to its birth parents and to cease all medical treatments as the parents
9 see fit; and, before the created program is implemented, the program must be approved
10 by an appropriate court or federal agency for review; and, the program must be
11 implemented within 180 days of the valid judgment of this honorable Court.

12 2653. Accordingly, and in connection with the alleged negligence of the Defendant
13 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all appropriate
14 monetary relief, compensatory and punitive, as the Court sees fit.

15 2654. A Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
16 conduct, including but not limited to, emotional and psychological distress, pain and
17 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
18 appropriate compensatory damages to account for PTSD therapies and other related
19 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
20 request an amount of \$84,800 in compensatory damages per Defendant.

21 2655. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
22 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates
23 Group, St. Luke's Obstetrics and Gynecology Associates, Monroe County, Northampton

1 County, Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia
2 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD,
3 Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD,
4 Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr.
5 Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms.
6 Kimberly A. Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security
7 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
8 Dawn Hoffman, the "Hospital Leadership Team," and therefore, their ability to afford the
9 appropriate training to avoid this egregious violation of the Pennsylvania Common Law,
10 and, since harm was actually caused to the current Plaintiffs Smith Family, and since
11 harm is likely to continue to harm future postpartum families, and because the acts of
12 the Defendants and their agents, assigns, or employees callously disregarded the
13 Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the
14 imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
15 OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St.
16 Luke's Obstetrics and Gynecology Associates, Monroe County, Northampton County,
17 Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD,
18 Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
19 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
20 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
21 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
22 Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
23 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,

the “Hospital Leadership Team,” to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Patricia Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP; \$5,000,000 per Defendants St. Luke’s Physicians Group, Bethlehem Neonatal Associates Group, St. Luke’s Obstetrics and Gynecology Associates, Mr. Patrick Philpot, DO, and Ms. Chaminie Wheeler, DO; and \$10,000,000 per Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

2656. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XX. Negligence XVII

Smith, et al. v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, & Ms. Teresa Marlino, MD

2657. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting to

1 the interests of another.²⁰⁶

2 2658. Negligence (1): A private medical provider actor accusing a mother of illegal
3 methamphetamine use has a duty to only do so with a court order or with reasonable
4 suspicion of drug abuse on the part of the mother, including signs and symptoms of
5 methamphetamine withdrawal in the newborn baby and the mother, and a drug test with
6 positive and distinguishable results for methamphetamine alone.

7 2659. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, &
8 Ms. Teresa Marlino, MD, in her effort to separate Plaintiff Newborn baby J.A.S. from his
9 parents failed to conform to the aforementioned duty when, without a court order, any
10 reasonable suspicion of methamphetamine use by Plaintiff Mrs. Smith, nor a drug test
11 with positive and distinguishable results for methamphetamine alone, unequivocally
12 accused Plaintiff Mrs. Smith of ingesting illegal methamphetamine.

13 2660. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, &
14 Ms. Teresa Marlino, MD, actively and of her own volition, accused Plaintiff Mrs. Smith of
15 methamphetamine ingestion, and implied that the deleterious effects of
16 methamphetamine ingestion by Plaintiff Mrs. Smith were passed on to Plaintiff Newborn
17 baby J.A.S. in an effort to separate Plaintiff Newborn baby J.A.S. from his parents
18 Plaintiffs Mr. and Mrs. Smith.

²⁰⁶See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2661. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
2 Newborn baby J.A.S. against their will and consent and were left without control over
3 the care of their Plaintiff Newborn baby J.A.S., including the ability to breastfeed
4 Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent
5 to Newborn baby J.A.S.'s medical treatment.

6 2662. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, & Ms. Teresa
7 Marlino, MD's conduct violated Plaintiffs' rights under Pennsylvania common law
8 negligence.

9 2663. Accordingly, and in connection with the alleged negligence of the Defendant
10 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
11 Entities be required to adopt a third-party training program which demonstrates
12 appropriate circumstances under which a child should be reasonably separated from its
13 natural parents, and the specific legal procedures to adhere to for such a separation to
14 take place, including only accusing a mother of illegal methamphetamine use with a
15 court order, signs and symptoms of methamphetamine withdrawal in both the mother
16 and the newborn child, and a drug test with positive and distinguishable results for
17 methamphetamine alone.

18 2664. Accordingly, and in connection with the alleged negligence of the Defendant
19 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
20 Persons be required to attend and pass a rigorous a third-party training program which
21 demonstrates appropriate circumstances under which a child should be reasonably
22 separated from its natural parents, and the specific legal procedures to adhere to for
23 such a separation to take place, including only accusing a mother of illegal

1 methamphetamine use with a court order, signs and symptoms of methamphetamine
2 withdrawal in both the mother and the newborn child, and a drug test with positive and
3 distinguishable results for methamphetamine alone.

4 2665. Accordingly, if a third-party cannot be found to render the appropriately rigorous
5 training course, then the Defendant Entities should create their own legal training
6 program which demonstrates appropriate circumstances under which a child should be
7 reasonably separated from its natural parents, and the specific legal procedures to
8 adhere to for such a separation to take place, including only accusing a mother of illegal
9 methamphetamine use with a court order, signs and symptoms of methamphetamine
10 withdrawal in both the mother and the newborn child, and a drug test with positive and
11 distinguishable results for methamphetamine alone; and, before the created program is
12 implemented, the program must be approved by an appropriate court or federal agency
13 for review; and, the program must be implemented within 180 days of the valid
14 judgment of this honorable Court.

15 2666. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
16 conduct, including but not limited to, emotional and psychological distress, pain and
17 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
18 appropriate compensatory damages to account for PTSD therapies and other related
19 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
20 request an amount of \$84,800 in compensatory damages per Defendant.

21 2667. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
22 Neonatal, OBHG PA, & Ms. Teresa Marlino, MD, and therefore, their ability to afford the
23 appropriate training to avoid this egregious violation of the Pennsylvania Common Law,

and, since harm was actually caused to the current Plaintiffs Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, & Ms. Teresa Marlino, MD, to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, and Ms. Teresa Marlino, MD.

2668. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXI. Negligence XVIII

Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello,

DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates,
CRNP, & Ms. Kimberly A. Nardis, CRNP

2669. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty or obligation recognized by the law, requiring the actor to conform to a certain standard of conduct; (2) a failure to conform to the required standard; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage resulting to the interests of another.²⁰⁷

2670. Negligence (1): A private medical provider actor treating a newborn baby has a duty not to give that child antibiotics that they do not require, especially if those antibiotics could lead to life threatening conditions in the newborn.

2671. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP, failed to conform to the aforementioned duty when the

²⁰⁷ See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 Defendants administered antibiotics against the consent and will of Plaintiffs Mr. and
2 Mrs. Smith, and in doing so caused Plaintiff Newborn baby J.A.S. to suffer the life-
3 threatening condition of pyloric stenosis.

4 2672. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
5 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
6 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.

7 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn

8 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.

9 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.

10 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.

11 Kimberly A. Nardis, CRNP, actively and of their own volition, gave without valid cause a

12 copious amount of antibiotics to Plaintiff Newborn baby J.A.S. in his first few days of life,

13 which, upon information and belief, later caused the life-threatening condition of pyloric

14 stenosis wherein Plaintiff Newborn baby J.A.S. could not process any food or liquid from

15 his stomach into his intestines, causing Plaintiff Newborn baby J.A.S. to vomit

16 copiously, lose weight, and steadily dehydrate to near death.

17 2673. Negligence (4): Newborn baby J.A.S. did in fact suffer severe dehydration

18 stemming from his inability to maintain fluids, leading to his eventual hospitalization and

19 surgery at Lehigh Valley Medical Center to correct the pyloric stenosis.

20 2674. Defendant's St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's

21 Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and

22 Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick

23 Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn

1 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
2 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
3 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.
4 Kimberly A. Nardis, CRNP's conduct violated Plaintiffs' rights under Pennsylvania
5 common law negligence.

6 2675. Accordingly, and in connection with the alleged negligence of the Defendant
7 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
8 Entities be required to adopt a third-party training program which demonstrates
9 appropriate circumstances under which a child should be reasonably separated from its
10 natural parents, and the specific legal procedures to adhere to for such a separation to
11 take place, and that under no circumstances should any child receive any medication,
12 antibiotic, or treatment of any sort whatsoever, unless absolutely necessary to maintain
13 that child from actually falling into a life-threatening condition, and not to maintain a
14 narrative based on some hypothetical possibility that in reality is highly improbable.

15 2676. Accordingly, and in connection with the alleged negligence of the Defendant
16 parties, Plaintiffs Mr. and Mrs. Smith and newborn baby J.A.S. request all Defendant
17 Persons be required to attend and pass a rigorous a third-party training program which
18 demonstrates appropriate circumstances under which a child should be reasonably
19 separated from its natural parents, and the specific legal procedures to adhere to for
20 such a separation to take place, and that under no circumstances should any child
21 receive any medication, antibiotic, or treatment of any sort whatsoever, unless
22 absolutely necessary to maintain that child from actually falling into a life-threatening

1 condition, and not to maintain a narrative based on some hypothetical possibility that is
2 in reality highly improbable.

3 2677. Accordingly, if a third-party cannot be found to render the appropriately rigorous
4 training course, then the Defendant Entities should create their own legal training
5 program which demonstrates appropriate circumstances under which a child should be
6 reasonably separated from its natural parents, and the specific legal procedures to
7 adhere to for such a separation to take place, and that under no circumstances should
8 any child receive any medication, antibiotic, or treatment of any sort whatsoever, unless
9 absolutely necessary to maintain that child from actually falling into a life-threatening
10 condition, and not to maintain a narrative based on some hypothetical possibility that is
11 in reality highly improbable; and, before the created program is implemented, the
12 program must be approved by an appropriate court or federal agency for review; and,
13 the program must be implemented within 180 days of the valid judgment of this
14 honorable Court.

15 2678. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
16 conduct, including but not limited to, emotional and psychological distress, pain and
17 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
18 appropriate compensatory damages to account for PTSD therapies and other related
19 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
20 request an amount of \$84,800 in compensatory damages per Defendant.

21 2679. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
22 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates
23 Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms.

1 Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N.
2 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
3 Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A.
4 Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia
5 Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP, and therefore, their ability to afford
6 the appropriate training to avoid this egregious violation of the Pennsylvania Common
7 Law, and, since harm was actually caused to the current Plaintiffs Smith Family, and
8 since harm is likely to continue to harm future postpartum families, and because the
9 acts of the Defendants and their agents, assigns, or employees callously disregarded
10 the Plaintiff's rights in a reckless and wanton manner, the Plaintiff respectfully requests
11 the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
12 OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St.
13 Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia
14 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD,
15 Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD,
16 Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr.
17 Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.
18 Kimberly A. Nardis, CRNP, to deter such Defendants from committing to such conduct
19 in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs
20 respectfully request an amount of \$3,000,000 in punitive damages per Defendants Ms.
21 Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr.
22 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
23 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms.

1 Patricia Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP; \$15,000,000 per Defendants
 2 St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's
 3 Obstetrics and Gynecology Associates, Mr. Patrick Philpot, DO, and Ms. Chaminie
 4 Wheeler, DO; and \$30,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal,
 5 OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

6 2680. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 7 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 8 respectfully request a nominal judgment of \$1.00.

9 **XXII. Negligent Infliction of Emotional Distress I**

10 Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa
 11 Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
 12 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

13 2681. Under Pennsylvania tort law, determination of negligent infliction of emotional
 14 distress liability depends on "whether the emotional injuries sustained by the plaintiff
 15 were reasonably foreseeable to the defendant."²⁰⁸

16 2682. Pennsylvania recognizes that a plaintiff has to among other options, in order to
 17 sustain an NIED claim, have "a contemporaneous perception of tortuous injury to a
 18 close relative".²⁰⁹

²⁰⁸*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²⁰⁹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

1 2683. An NIED claim can be supported in cases when "the defendant assumes a duty
2 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
3 being." *Toney*, 36 A.3d at 92.

4 2684. As well, "special relationships must encompass an implied duty to care for the
5 plaintiff's emotional well- being." *Toney*, 36 A.3d at 95.

6 2685. In *The Law of Torts*, Professor Dobbs explained that caring for the emotional
7 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
8 stillborn child. (Citing *The Law of Torts*, § 29.15 (2000)).²¹⁰

9 2686. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
10 "intensely emotionally charged" sort for a court to recognize a pertinent "special
11 relationship" giving rise not to negligently inflict emotional distress. *Id* at 20-21.

12 2687. Plaintiff must demonstrate "compensable emotional harm" which is harm of a
13 type that a reasonable person is not expected to bear. *Toney*, 36 A.3d at 95.

14 2688. The Plaintiff will have to demonstrate physical manifestations of emotional
15 distress.²¹¹

16 2689. In addition to proving elements of a valid NIED claim, the Plaintiff will first have
17 to establish the traditional elements of a negligence claim. *Id*.

18 2690. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
19 or obligation recognized by the law, requiring the actor to conform to a certain standard
20 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
21 between the conduct and the resulting injury; and (4) actual loss or damage resulting to

²¹⁰*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

²¹¹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

1 the interests of another.²¹²

2 2691. Negligence (1): A private medical provider actor removing a newborn child from
3 the custody of its parents has a duty to only do so with a court order or with reasonable
4 suspicion of drug abuse on the part of the mother.

5 2692. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, &
6 Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert
7 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
8 Team", failed to conform to the aforementioned duty when the Defendants removed
9 Plaintiffs Mr. and Mrs. Smith from Plaintiff Newborn baby J.A.S. by ejecting Plaintiffs Mr.
10 and Mrs. Smith from Defendant St. Luke's Hospital property without reasonable
11 suspicion of drug abuse by Plaintiff Mrs. Smith or a court order to separate Plaintiff
12 Newborn baby J.A.S. from his parents.

13 2693. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, &
14 Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert
15 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
16 actively and of their own volition, contacted Northampton County CYC, Monroe County
17 CYC, and the Bethlehem Police Department in a concerted effort to separate Plaintiff
18 Newborn baby J.A.S. from his parents Plaintiffs Mr. and Mrs. Smith.

²¹²See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2694. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
2 Newborn baby J.A.S. against their will and consent and were left without control over
3 the care of their son Newborn baby J.A.S., including the ability to breastfeed Newborn
4 baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent to
5 Newborn baby J.A.S.'s medical treatment.

6 2695. Ejecting parents from hospital property against their will and consent under threat
7 of arrest in order to separate them from their newborn baby who was in neonatal
8 intensive care was sure to cause emotional injuries to the Plaintiffs that were reasonably
9 foreseeable to the Defendants.

10 2696. Plaintiffs Mr. and Mrs. Smith perceived "a contemporaneous perception of
11 tortuous injury to a close relative" because they knew that if they were removed from the
12 hospital grounds that Plaintiff Newborn baby J.A.S. would undergo treatments and
13 medical services not consented to, as well, it was clear that Plaintiff Mrs. Smith would
14 not be able to breastfeed Plaintiff Newborn baby J.A.S., nor would skin-to-skin contact
15 be possible between Plaintiffs Mr. or Mrs. Smith and Newborn baby J.A.S.

16 2697. As medical providers the Defendants had a special relationship with the mother
17 and father of a child in neonatal intensive care to take care of the feelings of that mother
18 and father.

19 2698. Any situation in which parents are being separated from their newborn baby
20 against the parents' will and consent is of the "intensely emotionally charged" sort that
21 gives rise to a duty to not negligently inflict emotional distress.

22 2699. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Plaintiff
23 Newborn baby J.A.S. who is their child who was in neonatal intensive care at the time of

1 his removal from his parents against their will and consent, and without cause, shortly
2 after his birth by the Defendants and their agents, employees, or assigns, which was an
3 “intensely emotionally charged” situation.

4 2700. Plaintiffs Mr. and Mrs. Smith being removed against their will and consent from
5 Defendant St. Luke’s Hospital property without cause created the type of compensable
6 harm that is worthy of relief because the harm inflicted on Plaintiffs Mr. and Mrs. Smith
7 was of the type that a reasonable person is not expected to bear.

8 2701. Defendant’s St. Luke’s Hospital, Onsite Neonatal, OBHG PA, & Ms. Teresa
9 Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,
10 Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team’s” conduct
11 violated Plaintiffs’ rights under Pennsylvania common law negligent infliction of
12 emotional distress.

13 2702. Plaintiff Mrs. Smith has suffered the following physical manifestations of
14 emotional distress to the Defendant’s alleged negligence: nightmares, night sweats,
15 excessive diarrhea, anxiety and panic attacks, separation anxiety from Newborn baby
16 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
17 reliving the incident, muscle tightness and back spasms, and body tremors.

18 2703. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
19 distress due to the Defendant’s alleged negligence: intense headaches, depression,
20 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
21 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
22 loss of appetite, and excessive dry skin sometimes forming open sores on his scalp and
23 face.

1 2704. Accordingly, and in connection with the alleged negligent infliction of emotional
2 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
3 Entities be required to adopt a third-party training program which demonstrates
4 appropriate circumstances under which a child should be reasonably separated from its
5 natural parents, and the specific legal procedures to adhere to for such a separation to
6 take place.

7 2705. Accordingly, and in connection with the alleged negligent infliction of emotional
8 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
9 Persons be required to attend and pass a rigorous a third-party training program which
10 demonstrates appropriate circumstances under which a child should be reasonably
11 separated from its natural parents, and the specific legal procedures to adhere to for
12 such a separation to take place.

13 2706. Accordingly, if a third-party cannot be found to render the appropriately rigorous
14 training course, then the Defendant Entities should create their own legal training
15 program which demonstrates appropriate circumstances under which a child should be
16 reasonably separated from its natural parents, and the specific legal procedures to
17 adhere to for such a separation to take place; and, before the created program is
18 implemented, the program must be approved by an appropriate court or federal agency
19 for review; and, the program must be implemented within 180 days of the valid
20 judgment of this honorable Court.

21 2707. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
22 conduct, including but not limited to, emotional and psychological distress, pain and
23 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests

1 appropriate compensatory damages to account for PTSD therapies and other related
2 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
3 request an amount of \$84,800 in compensatory damages per Defendant.

4 2708. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
5 Neonatal, OBHG PA, & Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve
6 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
7 "Hospital Leadership Team", and therefore, their ability to afford the appropriate training
8 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm
9 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
10 continue to harm future postpartum families, and because the acts of the Defendants
11 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
12 reckless and wanton manner, the Plaintiff respectfully requests the imposition of
13 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, &
14 Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert
15 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
16 Team", to deter such Defendants from committing to such conduct in the future which
17 violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an
18 amount of \$5,000,000 in punitive damages per Defendants Mr. Steve Lanshe, Esq., Mr.
19 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
20 Team"; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG
21 PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

2709. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXIII. Negligent Infliction of Emotional Distress II

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

2710. Under Pennsylvania tort law, determination of negligent infliction of emotional distress liability depends on "whether the emotional injuries sustained by the plaintiff were reasonably foreseeable to the defendant."²¹³

2711. Pennsylvania recognizes that a plaintiff has to among other options, in order to sustain an NIED claim, have "a contemporaneous perception of tortuous injury to a close relative".²¹⁴

2712. An NIED claim can be supported in cases when "the defendant assumes a duty by contract, or otherwise when the duty encompasses the plaintiff's emotional well-being." *Toney*, 36 A.3d at 92.

2713. As well, "special relationships must encompass an implied duty to care for the plaintiff's emotional well-being." *Toney*, 36 A.3d at 95.

2714. In *The Law of Torts*, Professor Dobbs explained that caring for the emotional

²¹³*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²¹⁴*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

1 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
2 stillborn child. (Citing *The Law of Torts*, § 29.15 (2000)).²¹⁵

3 2715. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
4 "intensely emotionally charged" sort for a court to recognize a pertinent "special
5 relationship" giving rise not to negligently inflict emotional distress. *Id* at 20-21.

6 2716. Plaintiff must demonstrate "compensable emotional harm" which is harm of a
7 type that a reasonable person is not expected to bear. *Toney*, 36 A.3d at 95.

8 2717. The Plaintiff will have to demonstrate physical manifestations of emotional
9 distress.²¹⁶

10 2718. In addition to proving elements of a valid NIED claim, the Plaintiff will first have
11 to establish the traditional elements of a negligence claim. *Id*.

12 2719. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
13 or obligation recognized by the law, requiring the actor to conform to a certain standard
14 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
15 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
16 the interests of another.²¹⁷

²¹⁵*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

²¹⁶*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²¹⁷*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 2720. Negligence (1): A private medical provider actor has a duty not to accuse a
2 mother of being a child abuser from the results of inconclusive urine drug screening
3 alone, and if such allegations are eventually to be levied, they must be done in light of
4 signs and symptoms of methamphetamine withdrawal from the newborn baby child.

5 2721. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
6 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
7 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team",
8 failed to conform to the aforementioned duty when the Defendants accused Plaintiffs
9 Mrs. Smith and Newborn baby J.A.S. of having methamphetamine in their bodies
10 without any signs or symptoms of methamphetamine withdrawal.

11 2722. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
12 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
13 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
14 actively and of their own volition, began asserting without cause that Mrs. Smith
15 ingested methamphetamine aloud to staff and employees (in both private and common
16 areas of the hospital), written in medical records, to police officers, and to children and
17 youth offices, and they did so without observing any signs or symptoms of
18 methamphetamine withdrawal in Newborn baby J.A.S. or Plaintiff Mrs. Smith, thereby
19 creating an atmosphere so hostile to the Plaintiff Smith Family that they were eventually
20 ejected from Defendant St. Luke's Hospital's property against their will and consent
21 under threat of arrest.

22 2723. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from
23 Newborn baby J.A.S. against their will and consent and were left without control over

1 the care of their son Newborn baby J.A.S., including the ability to breastfeed Newborn
2 baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent to
3 Newborn baby J.A.S.'s medical treatment.

4 2724. Sole reliance on an undifferentiated drug test for stimulants, which included legal
5 amphetamines and illegal methamphetamines without distinction; and repudiation of the
6 fact that neither Plaintiff Mrs. Smith nor Newborn baby J.A.S. demonstrated any signs or
7 symptoms of methamphetamine withdrawal, in a concerted effort to eject parents
8 against their will and consent from hospital property under threat of arrest in order to
9 separate the parents from their newborn baby who was in neonatal intensive care was
10 sure to cause emotional injuries to the Plaintiffs that were reasonably foreseeable to the
11 Defendants.

12 2725. Plaintiffs Mr. and Mrs. Smith perceived “a contemporaneous perception of
13 tortuous injury to a close relative” because they knew that if they were removed from the
14 hospital grounds that Newborn baby J.A.S. would undergo treatments and medical
15 services not consented to, as well, it was clear that Plaintiff Mrs. Smith would not be
16 able to breastfeed Newborn baby J.A.S., nor would skin-to-skin contact be possible
17 between Mr. or Mrs. Smith and Newborn baby J.A.S.

18 2726. As medical providers the Defendants had a special relationship with the mother
19 and father of a child in neonatal intensive care to take care of the feelings of that mother
20 and father.

21 2727. Any situation in which parents are being separated from their newborn baby
22 against the parents’ will and consent is of the “intensely emotionally charged” sort that
23 gives rise to a duty to not negligently inflict emotional distress.

1 2728. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Newborn
2 baby J.A.S. who is their child who was in neonatal intensive care at the time of his
3 removal from his parents against their will and consent, without cause shortly after birth
4 by the Defendants and their agents, employees, or assigns, which was an “intensely
5 emotionally charged” situation.

6 2729. Plaintiffs Mr. and Mrs. Smith being removed against their will and consent from
7 Defendant St. Luke’s Hospital property without cause created the type of compensable
8 harm that is worthy of relief because the harm inflicted on Plaintiffs Mr. and Mrs. Smith
9 was of the type that a reasonable person is not expected to bear.

10 2730. Defendant’s St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa
11 Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,
12 Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team’s” conduct
13 violated Plaintiffs’ rights under Pennsylvania common law negligent infliction of
14 emotional distress.

15 2731. Plaintiff Mrs. Smith has suffered the following physical manifestations of
16 emotional distress to the Defendant’s alleged negligence: nightmares, night sweats,
17 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
18 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
19 reliving the incident, muscle tightness and back spasms, and body tremors.

20 2732. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
21 distress due to the Defendant’s alleged negligence: intense headaches, depression,
22 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
23 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,

1 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
2 face.

3 2733. Accordingly, and in connection with the alleged negligence of the Defendant
4 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
5 a third-party training program which demonstrates appropriate circumstances under
6 which a child should be reasonably separated from its natural parents, and the specific
7 legal procedures to adhere to for such a separation to take place, including what the
8 signs and symptoms of methamphetamine withdrawal are, and when and how to
9 appropriately attest to them in patient records, and to only separate a newborn child
10 from its parents if signs and symptoms of methamphetamine withdrawal are present.

11 2734. Accordingly, and in connection with the alleged negligence of the Defendant
12 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
13 attend and pass a rigorous a third-party training program which demonstrates
14 appropriate circumstances under which a child should be reasonably separated from its
15 natural parents, and the specific legal procedures to adhere to for such a separation to
16 take place, including what the signs and symptoms of methamphetamine withdrawal
17 are, and when and how to appropriately attest to them in patient records, and to only
18 separate a newborn child from its parents if signs and symptoms of methamphetamine
19 withdrawal are present.

20 2735. Accordingly, if a third-party cannot be found to render the appropriately rigorous
21 training course, then the Defendant Entities should create their own legal training
22 program which demonstrates appropriate circumstances under which a child should be
23 reasonably separated from its natural parents, and the specific legal procedures to

1 adhere to for such a separation to take place, including what the signs and symptoms of
2 methamphetamine withdrawal are, and when and how to appropriately attest to them in
3 patient records, and to only separate a newborn child from its parents if signs and
4 symptoms of methamphetamine withdrawal are present; and, before the created
5 program is implemented, the program must be approved by an appropriate court or
6 federal agency for review; and, the program must be implemented within 180 days of
7 the valid judgment of this honorable Court.

8 2736. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
9 conduct, including but not limited to, emotional and psychological distress, pain and
10 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
11 appropriate compensatory damages to account for PTSD therapies and other related
12 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
13 request an amount of \$84,800 in compensatory damages per Defendant.

14 2737. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
15 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve
16 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
17 "Hospital Leadership Team", and therefore, their ability to afford the appropriate training
18 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm
19 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
20 continue to harm future postpartum families, and because the acts of the Defendants
21 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
22 reckless and wanton manner, the Plaintiff respectfully requests the imposition of
23 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.

1 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
 2 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”,
 3 to deter such Defendants from committing to such conduct in the future which violates
 4 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
 5 of \$5,000,000 in punitive damages per Defendants Mr. Steve Lanshe, Esq., Mr. Robert
 6 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership
 7 Team”; and \$10,000,000 per Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG
 8 PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.
 9 2738. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 10 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 11 respectfully request a nominal judgment of \$1.00.

12 **XXIV. Negligent Infliction of Emotional Distress III**

13 Smith, et al. v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
 14 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
 15 Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”

16 2739. Under Pennsylvania tort law, determination of negligent infliction of emotional
 17 distress liability depends on “whether the emotional injuries sustained by the plaintiff
 18 were reasonably foreseeable to the defendant.”²¹⁸

²¹⁸*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

1 2740. Pennsylvania recognizes that a plaintiff has to among other options, in order to
2 sustain an NIED claim, have “a contemporaneous perception of tortuous injury to a
3 close relative”.²¹⁹

4 2741. An NIED claim can be supported in cases when “the defendant assumes a duty
5 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
6 being.” *Toney*, 36 A.3d at 92.

7 2742. As well, “special relationships must encompass an implied duty to care for the
8 plaintiff's emotional well- being.” *Toney*, 36 A.3d at 95.

9 2743. In *The Law of Torts*, Professor Dobbs explained that caring for the emotional
10 well-being of the plaintiff is a “duty to take care for the feelings of,” e.g., the mother of a
11 stillborn child. (Citing *The Law of Torts*, § 29.15 (2000)).²²⁰

12 2744. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
13 “intensely emotionally charged” sort for a court to recognize a pertinent “special
14 relationship” giving rise not to negligently inflict emotional distress. *Id* at 20-21.

15 2745. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
16 type that a reasonable person is not expected to bear. *Toney*, 36 A.3d at 95.

17 2746. The Plaintiff will have to demonstrate physical manifestations of emotional
18 distress.²²¹

19 2747. In addition to proving elements of a valid NIED claim, the Plaintiff will first have
20 to establish the traditional elements of a negligence claim. *Id*.

²¹⁹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²²⁰*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

²²¹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

1 2748. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
2 or obligation recognized by the law, requiring the actor to conform to a certain standard
3 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
4 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
5 the interests of another.²²²

6 2749. Negligence (1): A private medical provider actor removing a newborn child from
7 the custody of its parents has a duty to only do so with a report of true and valid medical
8 information released to state authorities.

9 2750. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
10 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
11 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
12 failed to conform to the aforementioned duty when the Defendants contacted state
13 authorities Northampton County CYS, Monroe County CYS, and the Bethlehem Police
14 Dept. and reported the false medical information that Plaintiff Mrs. Smith ingested illegal
15 methamphetamine and that she had passed on the deleterious effects of
16 methamphetamine use to her son Plaintiff Newborn baby J.A.S.

17 2751. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
18 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
19 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

²²²See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 actively and of their own volition, contacted Northampton County CYS, Monroe County
2 CYS, and the Bethlehem Police Department and released false medical records that
3 Plaintiff Mrs. Smith had ingested illegal methamphetamine and passed the deleterious
4 effects of methamphetamine use on to her son Plaintiff Newborn baby J.A.S.

5 2752. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
6 Newborn baby J.A.S. against their will and consent and were left without control over
7 the care of their son Plaintiff Newborn baby child J.A.S., including the ability to
8 breastfeed Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S.,
9 and consent to Newborn baby J.A.S.'s medical treatment.

10 2753. Releasing false medical record information in order to justify ejecting parents
11 against their will and consent from hospital property under threat of arrest in order to
12 separate them from their newborn baby who was in neonatal intensive care was sure to
13 cause emotional injuries to the Plaintiffs that were reasonably foreseeable to the
14 Defendants.

15 2754. Plaintiffs Mr. and Mrs. Smith perceived "a contemporaneous perception of
16 tortuous injury to a close relative" because they knew that if they were removed from the
17 hospital grounds that Plaintiff Newborn baby J.A.S. would undergo treatments and
18 medical services not consented to, as well, it was clear that Plaintiff Mrs. Smith would
19 not be able to breastfeed Plaintiff Newborn baby J.A.S., nor would skin-to-skin contact
20 be possible between Plaintiffs Mr. or Mrs. Smith and Plaintiff Newborn baby J.A.S.

21 2755. As medical providers the Defendants had a special relationship with the mother
22 and father of a child in neonatal intensive care to take care of the feelings of that mother
23 and father.

1 2756. Any situation in which parents are being separated from their newborn baby
2 against the parents' will and consent is of the "intensely emotionally charged" sort that
3 gives rise to a duty to not negligently inflict emotional distress.

4 2757. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Plaintiff
5 Newborn baby J.A.S. who is their child who was in neonatal intensive care at the time of
6 his removal from his parents against their will and consent, without cause shortly after
7 birth by the Defendants and their agents, employees, or assigns, which was an
8 "intensely emotionally charged" situation.

9 2758. Plaintiffs Mr. and Mrs. Smith being removed against their will and consent from
10 Defendant St. Luke's Hospital property without cause created the type of compensable
11 harm that is worthy of relief because the harm inflicted on Plaintiffs Mr. and Mrs. Smith
12 was of the type that a reasonable person is not expected to bear.

13 2759. Defendant's St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa
14 Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,
15 Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's" conduct
16 violated Plaintiffs' rights under Pennsylvania common law negligent infliction of
17 emotional distress.

18 2760. Plaintiff Mrs. Smith has suffered the following physical manifestations of
19 emotional distress to the Defendant's alleged negligence: nightmares, night sweats,
20 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
21 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
22 reliving the incident, muscle tightness and back spasms, and body tremors.

1 2761. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
2 distress due to the Defendant's alleged negligence: intense headaches, depression,
3 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
4 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
5 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
6 face.

7 2762. Accordingly, and in connection with the alleged negligence of the Defendant
8 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
9 Entities be required to adopt a third-party training program which demonstrates
10 appropriate circumstances under which a child should be reasonably separated from its
11 natural parents, and the specific legal procedures to adhere to for such a separation to
12 take place, including the accurate recording of medical records bereft of bias, the
13 prevention of rumors about patients, and the consequences of communication of false
14 medical records to state authorities.

15 2763. Accordingly, and in connection with the alleged negligence of the Defendant
16 parties, Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S. request all Defendant
17 Persons be required to attend and pass a rigorous a third-party training program which
18 demonstrates appropriate circumstances under which a child should be reasonably
19 separated from its natural parents, and the specific legal procedures to adhere to for
20 such a separation to take place, with curricula including the accurate recording of
21 medical records bereft of bias, the prevention of rumors about patients, and the
22 consequences of communication of false medical records to state authorities.

1 2764. Accordingly, if a third-party cannot be found to render the appropriately rigorous
2 training course, then the Defendant Entities should create their own legal training
3 program which demonstrates appropriate circumstances under which a child should be
4 reasonably separated from its natural parents, and the specific legal procedures to
5 adhere to for such a separation to take place, including the accurate recording of
6 medical records bereft of bias, the prevention of rumors about patients, and the
7 consequences of communication of false medical records to state authorities; and,
8 before the created program is implemented, the program must be approved by an
9 appropriate court or federal agency for review; and, the program must be implemented
10 within 180 days of the valid judgment of this honorable Court.

11 2765. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
12 conduct, including but not limited to, emotional and psychological distress, pain and
13 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
14 appropriate compensatory damages to account for PTSD therapies and other related
15 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
16 request an amount of \$84,800 in compensatory damages per Defendant.

17 2766. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
18 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve
19 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
20 "Hospital Leadership Team", and therefore, their ability to afford the appropriate training
21 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm
22 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
23 continue to harm future postpartum families, and because the acts of the Defendants

1 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
 2 reckless and wanton manner, the Plaintiff respectfully requests the imposition of
 3 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
 4 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
 5 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team,"
 6 to deter such Defendants from committing to such conduct in the future which violates
 7 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
 8 of \$5,000,000 in punitive damages per Defendants Mr. Steve Lanshe, Esq., Mr. Robert
 9 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
 10 Team"; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG
 11 PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.
 12 2767. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 13 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 14 respectfully request a nominal judgment of \$1.00.

15 **XXV. Negligent Infliction of Emotional Distress IV**

16 **Mr. & Mrs. Smith v. Anderson Labs & Ms. Emily Miller, MD**

17 2768. Under Pennsylvania tort law, determination of negligent infliction of emotional
 18 distress liability depends on "whether the emotional injuries sustained by the plaintiff
 19 were reasonably foreseeable to the defendant."²²³

²²³*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

1 2769. Pennsylvania recognizes that a plaintiff has to among other options, in order to
2 sustain an NIED claim, have “a contemporaneous perception of tortuous injury to a
3 close relative”.²²⁴

4 2770. An NIED claim can be supported in cases when “the defendant assumes a duty
5 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
6 being.” *Toney*, 36 A.3d at 92.

7 2771. As well, “special relationships must encompass an implied duty to care for the
8 plaintiff's emotional well- being.” *Toney*, 36 A.3d at 95.

9 2772. In *The Law of Torts*, Professor Dobbs explained that caring for the emotional
10 well-being of the plaintiff is a “duty to take care for the feelings of,” e.g., the mother of a
11 stillborn child. (Citing *The Law of Torts*, § 29.15 (2000)).²²⁵

12 2773. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
13 “intensely emotionally charged” sort for a court to recognize a pertinent “special
14 relationship” giving rise not to negligently inflict emotional distress. *Id* at 20-21.

15 2774. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
16 type that a reasonable person is not expected to bear. *Toney*, 36 A.3d at 95.

17 2775. The Plaintiff will have to demonstrate physical manifestations of emotional
18 distress.²²⁶

19 2776. In addition to proving elements of a valid NIED claim, the Plaintiff will first have
20 to establish the traditional elements of a negligence claim. *Id*.

²²⁴*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²²⁵*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

²²⁶*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

1 2777. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
2 or obligation recognized by the law, requiring the actor to conform to a certain standard
3 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
4 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
5 the interests of another.²²⁷

6 2778. Negligence (1): A private medical testing provider actor, when providing drug
7 tests to a fetal care facility, knows, or should know those test results are being used to
8 determine the custodial relationship between newborn children and their parents which
9 creates a duty owed to those parents and newborn children to only use clear-cut and
10 differentiated drug tests which distinguish between results for legal amphetamines and
11 illegal methamphetamines.

12 2779. Negligence (2): Defendants Anderson Labs, & Ms. Emily Miller, MD failed to
13 conform to the aforementioned duty when the Defendants provided a fetal medical
14 center, St. Luke's Hospital, with undifferentiated drug test results that did not distinguish
15 between legal amphetamines and illegal methamphetamines.

16 2780. Negligence (3): Defendants Anderson Labs, & Ms. Emily Miller, MD actively and
17 of their own volition, chose to use an undifferentiated urine drug screen that did not
18 distinguish between legal amphetamines and illegal methamphetamines, and then
19 provided "positive" results to St. Luke's Hospital, its affiliates, agents, employees, and/or

²²⁷ See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 assigns for potential illegal drug use that Defendants Anderson Labs and Ms. Emily
2 Miller, MD knew or should have known would be potentially used to separate a newborn
3 baby from its parents.

4 2781. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from
5 Newborn baby J.A.S. against their will and consent and were left without control over
6 the care of their son Newborn baby child J.A.S., including the ability to breastfeed
7 Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent
8 to newborn baby J.A.S.'s medical treatment.

9 2782. Providing undifferentiated testing between legal amphetamines and illegal
10 methamphetamines, and not separating the two categories independent of one another,
11 which Anderson Labs, its agents, employees, and/or assigns, knew or reasonably
12 should have known that such tests will be used to separate parents from their newborn
13 baby child who was in neonatal intensive care was sure to cause emotional injuries to
14 the Plaintiffs that were reasonably foreseeable to the Defendants.

15 2783. Plaintiffs Mr. and Mrs. Smith perceived "a contemporaneous perception of
16 tortuous injury to a close relative" because they knew that if they were removed from
17 the hospital grounds that Newborn baby J.A.S. would undergo treatments and medical
18 services not consented to, as well, it was clear that Plaintiff Mrs. Smith would not be
19 able to breastfeed Newborn baby J.A.S., nor would skin-to-skin contact be possible
20 between Plaintiffs Mr. or Mrs. Smith and Newborn baby J.A.S.

21 2784. As medical testing providers the Defendants had a special relationship with the
22 mother and father of a child in neonatal intensive care to take care of the feelings of that
23 mother and father.

1 2785. Any situation in which parents are being separated from their newborn baby
2 against the parents' will and consent is of the "intensely emotionally charged" sort that
3 gives rise to a duty to not negligently inflict emotional distress.

4 2786. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Newborn
5 baby J.A.S. who is their child who was in neonatal intensive care at the time of his
6 removal from his parents against their will and consent, without cause shortly after birth
7 because of undifferentiated testing between legal amphetamine and illegal
8 methamphetamine by the Defendants and their agents, employees, or assigns, which
9 was an "intensely emotionally charged" situation.

10 2787. Plaintiffs Mr. and Mrs. Smith being removed against their will and consent from
11 St. Luke's Hospital property due to the undifferentiated testing by Defendants created
12 the type of compensable harm that is worthy of relief because the harm inflicted on
13 Plaintiffs Mr. and Mrs. Smith was of the type that a reasonable person is not expected
14 to bear.

15 2788. Defendants Anderson Labs, & Ms. Emily Miller, MD's conduct violated Plaintiffs'
16 rights under Pennsylvania common law negligent infliction of emotional distress.

17 2789. Plaintiff Mrs. Smith has suffered the following physical manifestations of
18 emotional distress to the Defendant's alleged negligence: nightmares, night sweats,
19 excessive diarrhea, anxiety and panic attacks, separation anxiety from Newborn baby
20 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
21 reliving the incident, muscle tightness and back spasms, and body tremors.

22 2790. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
23 distress due to the Defendant's alleged negligence: intense headaches, depression,

1 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
2 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
3 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
4 face.

5 2791. Accordingly, and in connection with the alleged negligence of the Defendant
6 parties, Plaintiffs Mr. and Mrs. Smith request Defendant Anderson Labs be required to
7 only use drug tests which unequivocally separate each chemical substance from one
8 another, and to have those substances recorded in separate categories when reporting
9 results to requesting parties, their agents, employees, or assigns.

10 2792. Accordingly, if it is scientifically impossible to detect the chemical difference
11 between legal amphetamines and illegal methamphetamine then such tests not be
12 performed by Anderson Labs, their agents, employees, or assigns under any
13 circumstances.

14 2793. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
15 conduct, including but not limited to, emotional and psychological distress, pain and
16 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
17 appropriate compensatory damages to account for PTSD therapies and other related
18 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
19 request an amount of \$84,800 in compensatory damages per Defendant.

20 2794. Given the substantial wealth of the Defendants Anderson Labs, & Ms. Emily
21 Miller, MD, and therefore, their ability to afford the appropriate training to avoid this
22 egregious violation of the Pennsylvania Common Law, and, since harm was actually
23 caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm

1 future postpartum families, and because the acts of the Defendants and their agents,
 2 assigns, or employees callously disregarded the Plaintiff's rights in a reckless and
 3 wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on
 4 Defendants Anderson Labs, & Ms. Emily Miller, MD to deter such Defendants from
 5 committing to such conduct in the future which violates Commonwealth of Pennsylvania
 6 Common Law Plaintiffs respectfully request an amount of \$5,000,000 in punitive
 7 damages per Defendants Anderson Labs, and Ms. Emily Miller, MD.

8 2795. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 9 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 10 respectfully request a nominal judgment of \$1.00.

11 **XXVI. Negligent Infliction of Emotional Distress V**

12 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Cynthia M.

13 Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie

14 Wheeler, DO & Ms. Patricia Bates, CRNP

15
 16 2796. Under Pennsylvania tort law, determination of negligent infliction of emotional
 17 distress liability depends on "whether the emotional injuries sustained by the plaintiff
 18 were reasonably foreseeable to the defendant."²²⁸

19 2797. Pennsylvania recognizes that a plaintiff has to among other options, in order to
 20 sustain an NIED claim, have "a contemporaneous perception of tortuous injury to a close

²²⁸*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

1 relative".²²⁹

2 2798. An NIED claim can be supported in cases when "the defendant assumes a duty
3 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
4 being." Toney, 36 A.3d at 92.

5 2799. As well, "special relationships must encompass an implied duty to care for the
6 plaintiff's emotional well- being." Toney, 36 A.3d at 95.

7 2800. In The Law of Torts, Professor Dobbs explained that caring for the emotional
8 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
9 stillborn child. (Citing The Law of Torts, § 29.15 (2000)).²³⁰

10 2801. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
11 "intensely emotionally charged" sort for a court to recognize a pertinent "special
12 relationship" giving rise not to negligently inflict emotional distress. *Id* at 20-21.

13 2802. Plaintiff must demonstrate "compensable emotional harm" which is harm of a
14 type that a reasonable person is not expected to bear. Toney, 36 A.3d at 95.

15 2803. The Plaintiff will have to demonstrate physical manifestations of emotional
16 distress.²³¹

17 2804. In addition to proving elements of a valid NIED claim, the Plaintiff will first have
18 to establish the traditional elements of a negligence claim. *Id*.

19 2805. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
20 or obligation recognized by the law, requiring the actor to conform to a certain standard

²²⁹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²³⁰*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

²³¹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

1 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
2 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
3 the interests of another.²³²

4 2806. Negligence (1): A private medical provider actor has a duty not to place a
5 newborn baby child's mother's medical information in that newborn child's medical
6 records because to do so would betray the doctor's duty of confidentiality to the mother.

7 2807. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA,
8 Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD,
9 Ms. Chaminie Wheeler, DO & Ms. Patricia Bates, CRNP failed to conform to the
10 aforementioned duty when the Defendants St. Luke's, Onsite Neonatal, OBHG PA, and
11 their agents, employees, and/or assigns unnecessarily placed medical information
12 about mother Plaintiff Mrs. Smith in Plaintiff Newborn baby J.A.S.'s medical records.

13 2808. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
14 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms.
15 Chaminie Wheeler, DO & Ms. Patricia Bates, CRNP actively and of their own volition,
16 placed information in notes and medical records of Plaintiff Newborn baby J.A.S. that
17 Plaintiff Mrs. Smith had ingested methamphetamine, and passed the deleterious effects
18 of methamphetamine use onto Plaintiff Newborn baby J.A.S. despite the fact that

²³²See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 Plaintiff Newborn baby J.A.S. did not at any time test positive for methamphetamine or
2 show signs and symptoms of methamphetamine withdrawal.

3 2809. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
4 Newborn baby J.A.S. against their will and consent and were left without control over
5 the care of their son Plaintiff Newborn baby child J.A.S., including the ability to
6 breastfeed Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S.,
7 and consent to Newborn baby J.A.S.'s medical treatment.

8 2810. Placing Plaintiff Mrs. Smith's accusations of methamphetamine ingestion in
9 Plaintiff Newborn baby J.A.S.'s medical records in order to forcibly eject parents from
10 hospital property under threat of arrest in order to separate them from their newborn
11 baby child who was in neonatal intensive care was sure to cause emotional injuries to
12 the Plaintiffs that were reasonably foreseeable to the Defendants.

13 2811. Plaintiffs Mr. and Mrs. Smith perceived "a contemporaneous perception of
14 tortuous injury to a close relative" because they knew that if they were removed from
15 the hospital grounds that Plaintiff Newborn baby J.A.S. would undergo treatments and
16 medical services not consented to, as well, it was clear that Plaintiff Mrs. Smith would
17 not be able to breastfeed Plaintiff Newborn baby J.A.S., nor would skin-to-skin contact
18 be possible between Plaintiffs Mr. or Mrs. Smith and Plaintiff Newborn baby J.A.S.

19 2812. As medical providers the Defendants had a special relationship with the mother
20 and father of a child in neonatal intensive care to take care of the feelings of that mother
21 and father.

1 2813. Any situation in which parents are being separated from their newborn baby
2 against the parents' will and consent is of the "intensely emotionally charged" sort that
3 gives rise to a duty to not negligently inflict emotional distress.

4 2814. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Plaintiff
5 Newborn baby J.A.S. who is their child who was in neonatal intensive care at the time of
6 his removal from his parents against their will and consent, without cause shortly after
7 birth by the Defendants and their agents, employees, or assigns, which was an
8 "intensely emotionally charged" situation.

9 2815. Plaintiffs Mr. and Mrs. Smith being removed against their will and consent from
10 Defendant St. Luke's Hospital's property without cause created the type of
11 compensable harm that is worthy of relief because the harm inflicted on Plaintiffs Mr.
12 and Mrs. Smith was of the type that a reasonable person is not expected to bear.

13 2816. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Cynthia M.
14 Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler,
15 DO & Ms. Patricia Bates, CRNP's conduct violated Plaintiffs' rights under Pennsylvania
16 common law negligent infliction of emotional distress.

17 2817. Plaintiff Mrs. Smith has suffered the following physical manifestations of
18 emotional distress to the Defendant's alleged negligence: nightmares, night sweats,
19 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
20 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
21 reliving the incident, muscle tightness and back spasms, and body tremors.

22 2818. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
23 distress due to the Defendant's alleged negligence: intense headaches, depression,

1 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
2 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
3 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
4 face.

5 2819. Accordingly, and in connection with the alleged negligence of the Defendant
6 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
7 a third-party training program which demonstrates appropriate circumstances under
8 which a child should be reasonably separated from its natural parents, and the specific
9 legal procedures to adhere to for such a separation to take place, including the limited
10 number of circumstances under which a mother's medical information may appear in
11 her child's medical records.

12 2820. Accordingly, and in connection with the alleged negligence of the Defendant
13 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
14 attend and pass a rigorous a third-party training program which demonstrates
15 appropriate circumstances under which a child should be reasonably separated from its
16 natural parents, and the specific legal procedures to adhere to for such a separation to
17 take place, including the limited number of circumstances under which a mother's
18 medical information may appear in her child's medical records.

19 2821. Accordingly, if a third-party cannot be found to render the appropriately rigorous
20 training course, then the Defendant Entities should create their own legal training
21 program which demonstrates appropriate circumstances under which a child should be
22 reasonably separated from its natural parents, and the specific legal procedures to
23 adhere to for such a separation to take place, including the limited number of

1 circumstances under which a mother's medical information may appear in her child's
2 medical records; and, before the created program is implemented, the program must be
3 approved by an appropriate court or federal agency for review; and, the program must
4 be implemented within 180 days of the valid judgment of this honorable Court.

5 2822. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
6 conduct, including but not limited to, emotional and psychological distress, pain and
7 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
8 appropriate compensatory damages to account for PTSD therapies and other related
9 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
10 request an amount of \$84,800 in compensatory damages per Defendant.

11 2823. Given the substantial wealth of the St. Luke's Hospital, Onsite Neonatal, OBHG
12 PA, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms.
13 Chaminie Wheeler, DO & Ms. Patricia Bates, CRNP, and therefore, their ability to afford
14 the appropriate training to avoid this egregious violation of the Pennsylvania Common
15 Law, and, since harm was actually caused to the current Plaintiff Smith Family, and
16 since harm is likely to continue to harm future postpartum families, and because the
17 acts of the Defendants and their agents, assigns, or employees callously disregarded
18 the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request
19 the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
20 OBHG PA, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago,
21 MD, Ms. Chaminie Wheeler, DO & Ms. Patricia Bates, CRNP to deter such Defendants
22 from committing to such conduct in the future which violates Commonwealth of
23 Pennsylvania Common Law Plaintiffs respectfully request an amount of \$1,000,000 in

punitive damages per Defendants Ms. Patricia Bates, CRNP, and Mr. Gilberto Santiago, MD; \$5,000,000 per Defendants Mr. Patrick Philpot, DO, and Ms. Chaminie Wheeler, DO; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, and Ms. Cynthia M. Shultz, MD..

2824. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXVII. Negligent Infliction of Emotional Distress VI

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

1 2825. Under Pennsylvania tort law, determination of negligent infliction of emotional
2 distress liability depends on “whether the emotional injuries sustained by the plaintiff
3 were reasonably foreseeable to the defendant.”²³³

4 2826. Pennsylvania recognizes that a plaintiff has to among other options, in order to
5 sustain an NIED claim, have “a contemporaneous perception of tortuous injury to a
6 close relative”.²³⁴

7 2827. An NIED claim can be supported in cases when “the defendant assumes a duty
8 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
9 being.” Toney, 36 A.3d at 92.

10 2828. As well, “special relationships must encompass an implied duty to care for the
11 plaintiff's emotional well- being.” Toney, 36 A.3d at 95.

12 2829. In The Law of Torts, Professor Dobbs explained that caring for the emotional
13 well-being of the plaintiff is a “duty to take care for the feelings of,” e.g., the mother of a
14 stillborn child. (Citing The Law of Torts, § 29.15 (2000)).²³⁵

15 2830. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
16 “intensely emotionally charged” sort for a court to recognize a pertinent “special
17 relationship” giving rise not to negligently inflict emotional distress. Id at 20-21.

18 2831. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
19 type that a reasonable is not person expected to bear. Toney, 36 A.3d at 95.

²³³*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²³⁴*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²³⁵*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 2832. The Plaintiff will have to demonstrate physical manifestations of emotional
2 distress.²³⁶

3 2833. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
4 establish the traditional elements of a negligence claim. *Id.*

5 2834. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
6 or obligation recognized by the law, requiring the actor to conform to a certain standard
7 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
8 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
9 the interests of another.²³⁷

10 2835. Negligence (1): A private medical provider actor removing a newborn child from
11 the custody of its parents has a duty to only do so with a court order or with reasonable
12 suspicion of drug abuse on the part of the mother; and, that reasonable suspicion that
13 the mother ingested an illegal substance requires a reasonable cursory investigation by
14 the hospital before contacting state authorities to allege the serious crime of child abuse
15 of a newborn baby.

16 2836. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
17 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.

²³⁶*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²³⁷*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.
2 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
3 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
4 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, "Security Supervisor 'Unknown'",
5 "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
6 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" failed to
7 conform to the aforementioned duty when the Defendants removed Plaintiffs Mr. and
8 Mrs. Smith from Plaintiff newborn baby J.A.S. by ejecting Plaintiffs Mr. and Mrs. Smith
9 from Defendant St. Luke's Hospital's property without conducting a reasonable cursory
10 investigation to establish reasonable suspicion of illegal drug abuse by Plaintiff Mrs.
11 Smith.

12 2837. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
13 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
14 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.
15 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
16 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
17 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, "Security Supervisor 'Unknown'",
18 "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
19 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" actively
20 and of their own volition, chose to ignore evidence to the contrary to the allegation that
21 Plaintiff Mrs. Smith ingested methamphetamine, including but not limited to, checking to
22 see if the levels of "positive" methamphetamine in Plaintiff Mrs. Smith's urine
23 corresponded with the amount of amphetamine she was prescribed, thereby

1 demonstrating that there was not more of any substance in her urine than she was
2 legally prescribed, contacting any of the three physicians, including Plaintiff Mrs. Smith's
3 previous obstetrician to confirm Plaintiff Mrs. Smith's assertions of not ingesting
4 methamphetamine, and, observing that neither Plaintiffs Newborn baby J.A.S., nor Mrs.
5 Smith were suffering withdrawal symptoms from substance abuse.

6 2838. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from Plaintiff
7 Newborn baby J.A.S. against their will and consent and were left without control over
8 the care of their son Plaintiff Newborn baby J.A.S., including the ability to breastfeed
9 Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent
10 to Newborn baby J.A.S.'s medical treatment.

11 2839. Defendants leveling accusations of methamphetamine ingestion on Plaintiff Mrs.
12 Smith, based solely on an undifferentiated drug test and without a reasonable cursory
13 investigation before contacting state authorities and accusing Plaintiff Mrs. Smith of
14 methamphetamine ingestion which she then supposedly passed on to Plaintiff Newborn
15 baby J.A.S., in order to eject parents from hospital property against their will and
16 consent under threat of arrest in order to separate them from their newborn baby who
17 was in neonatal intensive care was sure to cause emotional injuries to the Plaintiffs that
18 were reasonably foreseeable to the Defendants.

19 2840. Plaintiffs Mr. and Mrs. Smith perceived "a contemporaneous perception of
20 tortuous injury to a close relative" because they knew that if they were removed from the
21 hospital grounds that Plaintiff Newborn baby J.A.S. would undergo treatments and
22 medical services not consented to, as well, it was clear that Plaintiff Mrs. Smith would

1 not be able to breastfeed Plaintiff Newborn baby J.A.S., nor would skin-to-skin contact
2 be possible between Plaintiffs Mr. or Mrs. Smith and Plaintiff Newborn baby J.A.S.

3 2841. As medical providers the Defendants had a special relationship with the mother
4 and father of a child in neonatal intensive care to take care of the feelings of that mother
5 and father.

6 2842. Any situation in which parents are being separated from their newborn baby
7 against the parents' will and consent is of the "intensely emotionally charged" sort that
8 gives rise to a duty to not negligently inflict emotional distress.

9 2843. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Plaintiff
10 Newborn baby J.A.S. who is their child who was in neonatal intensive care at the time of
11 his removal from his parents against their will and consent, without cause shortly after
12 birth by the Defendants and their agents, employees, or assigns, which was an
13 "intensely emotionally charged" situation.

14 2844. Plaintiffs Mr. and Mrs. Smith being removed against their will and consent from
15 Defendant St. Luke's Hospital property without cause created the type of compensable
16 harm that is worthy of relief because the harm inflicted on Plaintiffs Mr. and Mrs. Smith
17 was of the type that a reasonable person is not expected to bear.

18 2845. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
19 MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD,
20 Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD,
21 Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms.
22 Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms.
23 Patricia Bates, CNRP, "Security Supervisor 'Unknown'", "Head of Hospital Security

1 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
2 Dawn Hoffman, and the "Hospital Leadership Team's" conduct violated Plaintiffs' rights
3 under Pennsylvania common law negligent infliction of emotional distress.

4 2846. Plaintiff Mrs. Smith has suffered the following physical manifestations of
5 emotional distress to the Defendant's alleged negligence: nightmares, night sweats,
6 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
7 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
8 reliving the incident, muscle tightness and back spasms, and body tremors.

9 2847. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
10 distress due to the Defendant's alleged negligence: intense headaches, depression,
11 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
12 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
13 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
14 face.

15 2848. Accordingly, and in connection with the alleged negligence of the Defendant
16 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
17 a third-party training program which demonstrates appropriate circumstances under
18 which a child should be reasonably separated from its natural parents, and the specific
19 legal procedures to adhere to for such a separation to take place, including what
20 consists of a reasonable cursory investigation into the likelihood of actual child abuse
21 before reporting the allegation that a mother has abused illegal drugs and passed the
22 deleterious effects of those drugs onto her newborn baby.

1 2849. Accordingly, and in connection with the alleged negligence of the Defendant
2 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
3 attend and pass a rigorous a third-party training program which demonstrates
4 appropriate circumstances under which a child should be reasonably separated from its
5 natural parents, and the specific legal procedures to adhere to for such a separation to
6 take place, including what consists of a reasonable cursory investigation into the
7 likelihood of actual child abuse before reporting the allegation that a mother has abused
8 illegal drugs and passed the deleterious effects of those drugs onto her newborn baby.

9 2850. Accordingly, if a third-party cannot be found to render the appropriately rigorous
10 training course, then the Defendant Entities should create their own legal training
11 program which demonstrates appropriate circumstances under which a child should be
12 reasonably separated from its natural parents, and the specific legal procedures to
13 adhere to for such a separation to take place, including what consists of a reasonable
14 cursory investigation into the likelihood of actual child abuse before reporting the
15 allegation that a mother has abused illegal drugs and passed the deleterious effects of
16 those drugs onto her newborn baby; and, before the created program is implemented,
17 the program must be approved by an appropriate court or federal agency for review;
18 and, the program must be implemented within 180 days of the valid judgment of this
19 honorable Court.

20 2851. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
21 conduct, including but not limited to, emotional and psychological distress, pain and
22 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
23 appropriate compensatory damages to account for PTSD therapies and other related

1 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
2 request an amount of \$84,800 in compensatory damages per Defendant.

3 2852. Given the substantial wealth of the St. Luke's Hospital, Onsite Neonatal, OBHG
4 PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms.
5 Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD,
6 Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
7 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
8 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, "Security Supervisor 'Unknown'",
9 "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
10 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team, and
11 therefore, their ability to afford the appropriate training to avoid this egregious violation
12 of the Pennsylvania Common Law, and, since harm was actually caused to the current
13 Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum
14 families, and because the acts of the Defendants and their agents, assigns, or
15 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
16 the Plaintiffs respectfully request the imposition of punitive damages on Defendants St.
17 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M.
18 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb,
19 MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
20 Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A.
21 Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia
22 Bates, CNRP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
23 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,

and the “Hospital Leadership Team” to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Patricia Bates, CNRP,; \$5,000,000 per Defendants Mr. Patrick Philpot, DO, Ms. Chaminie Wheeler, MD, “Security Supervisor ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”; and \$10,000,000 per Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia M. Shultz, MD.

2853. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXVIII. Negligent Infliction of Emotional Distress VII

Mr. & Mrs. Smith v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD,

1 Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr.
2 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital
3 Leadership Team"

4 2854. Under Pennsylvania tort law, determination of negligent infliction of emotional
5 distress liability depends on "whether the emotional injuries sustained by the plaintiff
6 were reasonably foreseeable to the defendant."²³⁸

7 2855. Pennsylvania recognizes that a plaintiff has to among other options, in order to
8 sustain an NIED claim, have "a contemporaneous perception of tortuous injury to a
9 close relative".²³⁹

10 2856. An NIED claim can be supported in cases when "the defendant assumes a duty
11 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
12 being." Toney, 36 A.3d at 92.

13 2857. As well, "special relationships must encompass an implied duty to care for the
14 plaintiff's emotional well- being." Toney, 36 A.3d at 95.

15 2858. In The Law of Torts, Professor Dobbs explained that caring for the emotional
16 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
17 stillborn child. (Citing The Law of Torts, § 29.15 (2000)).²⁴⁰

²³⁸*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²³⁹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁴⁰*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 2859. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
2 “intensely emotionally charged” sort for a court to recognize a pertinent “special
3 relationship” giving rise not to negligently inflict emotional distress. *Id.* at 20-21.

4 2860. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
5 type that a reasonable person is not expected to bear. *Toney*, 36 A.3d at 95.

6 2861. The Plaintiff will have to demonstrate physical manifestations of emotional
7 distress.²⁴¹

8 2862. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
9 establish the traditional elements of a negligence claim. *Id.*

10 2863. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
11 or obligation recognized by the law, requiring the actor to conform to a certain standard
12 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
13 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
14 the interests of another.²⁴²

15 2864. Negligence (1): A private medical provider actor removing a newborn child from
16 the custody of its parents has a duty to only do so with a court order or with reasonable
17 suspicion of drug abuse on the part of the mother, and in the absence of a court order,

²⁴¹ *Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁴² *See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 when willfully separating a newborn child from its parents, regardless of suspicions of
2 mother's guilt concerning the ingestion of methamphetamine, the private medical
3 provider has a duty to provide a viable appeals process for the decision to separate the
4 child from the parents in which the parents are appreciably heard and their perspectives
5 sincerely considered.

6 2865. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
7 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
8 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.
9 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
10 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
11 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert
12 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"
13 failed to conform to the aforementioned duty when the Defendants removed Plaintiffs
14 Mr. and Mrs. Smith from Newborn baby J.A.S. by ejecting Plaintiffs Mr. and Mrs. Smith
15 against their will and consent from Defendant St. Luke's Hospital's property without
16 reasonable suspicion of drug abuse by Plaintiff Mrs. Smith or a court order to separate
17 Newborn baby J.A.S. from his parents, and not one Defendant provided a valid appeals
18 process for the decision to separate them.

19 2866. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
20 Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
21 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.
22 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
23 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.

1 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert
2 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”
3 actively and of their own volition, contacted Northampton County CYS, Monroe County
4 CYS, and the Bethlehem Police Department in a concerted effort to separate Newborn
5 baby J.A.S. from his parents Plaintiffs Mr. and Mrs. Smith and to deny a valid appeals
6 process for that separation by keeping the focus of the issue on the alleged
7 methamphetamine use and implying that there was no way to overcome the decision
8 that was made because the decision made was already final, as became evident when
9 Plaintiffs Mr. and Mrs. Smith were escorted off of Defendant St. Luke’s Hospital property
10 by police officers against their will and consent.

11 2867. Negligence (4): Because there was not a valid appeals process, Plaintiffs Mr. and
12 Mrs. Smith were in fact, separated from Newborn baby J.A.S. against their will and
13 consent and were left without control over the care of their son Newborn baby J.A.S.,
14 including the ability to breastfeed Newborn baby J.A.S., have skin-to-skin contact with
15 Newborn baby J.A.S., and consent to Newborn baby J.A.S.’s medical treatment.

16 2868. The Defendants by never providing an appeals process to the Plaintiff parents in
17 order to eject parents against their will and consent from hospital property under threat
18 of arrest in order to separate them from their newborn baby who was in neonatal
19 intensive care was sure to cause emotional injuries to the Plaintiffs that were reasonably
20 foreseeable to the Defendants.

21 2869. Plaintiffs Mr. and Mrs. Smith perceived “a contemporaneous perception of
22 tortuous injury to a close relative” because they knew that if they were removed from the
23 hospital grounds that Newborn baby J.A.S. would undergo treatments and medical

1 services not consented to, as well, it was clear that Plaintiff Mrs. Smith would not be
2 able to breastfeed Newborn baby J.A.S., nor would skin-to-skin contact be possible
3 between Plaintiffs Mr. or Mrs. Smith and Newborn baby J.A.S.

4 2870. As medical providers the Defendants had a special relationship with the mother
5 and father of a child in neonatal intensive care to take care of the feelings of that mother
6 and father.

7 2871. Any situation in which parents are being separated from their newborn baby
8 against the parents' will and consent is of the "intensely emotionally charged" sort that
9 gives rise to a duty to not negligently inflict emotional distress.

10 2872. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Newborn
11 baby J.A.S. who is their child who was in neonatal intensive care at the time of his
12 removal from his parents against their will and consent, without cause shortly after birth
13 by the Defendants and their agents, employees, or assigns, which was an "intensely
14 emotionally charged" situation.

15 2873. Plaintiffs Mr. and Mrs. Smith being removed against their will and consent from
16 Defendant St. Luke's Hospital property without cause, and having no way to appeal the
17 decision to separate Plaintiffs Mr. and Mrs. Smith from Newborn baby J.A.S. created the
18 type of compensable harm that is worthy of relief because the harm inflicted on Plaintiffs
19 Mr. and Mrs. Smith was of the type that a reasonable person is not expected to bear.

20 2874. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
21 MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD,
22 Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD,
23 Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms.

1 Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms.
2 Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
3 Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team’s” conduct violated
4 Plaintiffs’ rights under Pennsylvania common law negligent infliction of emotional
5 distress.

6 2875. Plaintiff Mrs. Smith has suffered the following physical manifestations of
7 emotional distress to the Defendant’s alleged negligence: nightmares, night sweats,
8 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
9 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
10 reliving the incident, muscle tightness and back spasms, and body tremors.

11 2876. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
12 distress due to the Defendant’s alleged negligence: intense headaches, depression,
13 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
14 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
15 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
16 face.

17 2877. Accordingly, and in connection with the alleged negligence of the Defendant
18 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
19 a third-party training program which demonstrates appropriate circumstances under
20 which a child should be reasonably separated from its natural parents, and the specific
21 legal procedures to adhere to for such a separation to take place, including the
22 necessity for an impartial appeals process, as well, for when the mechanism for an
23 appeals process becomes available.

1 2878. Accordingly, and in connection with the alleged negligence of the Defendant
2 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
3 attend and pass a rigorous a third-party training program which demonstrates
4 appropriate circumstances under which a child should be reasonably separated from its
5 natural parents, and the specific legal procedures to adhere to for such a separation to
6 take place, including the necessity for an impartial appeals process, as well, for when
7 the mechanism for an appeals process becomes available.

8 2879. Accordingly, if a third-party cannot be found to render the appropriately rigorous
9 training course, then the Defendant Entities should create their own legal training
10 program which demonstrates appropriate circumstances under which a child should be
11 reasonably separated from its natural parents, and the specific legal procedures to
12 adhere to for such a separation to take place, including the necessity for an impartial
13 appeals process, as well, for when the mechanism for an appeals process becomes
14 available; and, before the created program is implemented, the program must be
15 approved by an appropriate court or federal agency for review; and, the program must
16 be implemented within 180 days of the valid judgment of this honorable Court.

17 2880. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
18 conduct, including but not limited to, emotional and psychological distress, pain and
19 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
20 appropriate compensatory damages to account for PTSD therapies and other related
21 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
22 request an amount of \$84,800 in compensatory damages per Defendant.

2881. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team," and therefore, their ability to afford the appropriate training to avoid this egregious violation of the Pennsylvania Common Law, and, since harm was actually caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team," to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants Ms. Dianne R. Jacobetz,

MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, and Ms. Patricia Bates, CNRP; \$5,000,000 per Defendants Mr. Patrick Philpot, DO, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”; and \$10,000,000 per Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia M. Shultz, MD. 2882. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXIX. Negligent Infliction of Emotional Distress VIII

Mr. & Mrs. Smith v. St. Luke’s Hospital, Onsite Neonatal, St. Luke’s Physician Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, & Ms. Dianne R. Jacobetz, MD

2883. Under Pennsylvania tort law, determination of negligent infliction of emotional distress liability depends on “whether the emotional injuries sustained by the plaintiff were reasonably foreseeable to the defendant.”²⁴³

²⁴³*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

1 2884. Pennsylvania recognizes that a plaintiff has to among other options, in order to
2 sustain an NIED claim, have “a contemporaneous perception of tortuous injury to a
3 close relative”.²⁴⁴

4 2885. An NIED claim can be supported in cases when "the defendant assumes a duty
5 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
6 being." Toney, 36 A.3d at 92.

7 2886. As well, "special relationships must encompass an implied duty to care for the
8 plaintiff's emotional well- being." Toney, 36 A.3d at 95.

9 2887. In The Law of Torts, Professor Dobbs explained that caring for the emotional
10 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
11 stillborn child. (Citing The Law of Torts, § 29.15 (2000)).²⁴⁵

12 2888. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
13 “intensely emotionally charged” sort for a court to recognize a pertinent “special
14 relationship” giving rise not to negligently inflict emotional distress. Id at 20-21.

15 2889. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
16 type that a reasonable is not person expected to bear. Toney, 36 A.3d at 95.

²⁴⁴*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁴⁵*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 2890. The Plaintiff will have to demonstrate physical manifestations of emotional
2 distress.²⁴⁶

3 2891. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
4 establish the traditional elements of a negligence claim. *Id.*

5 2892. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
6 or obligation recognized by the law, requiring the actor to conform to a certain standard
7 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
8 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
9 the interests of another.²⁴⁷

10 2893. Negligence (1): A private medical provider actor has a duty to convey true and
11 accurate medical information about a newborn baby to its parents.

12 2894. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, St. Luke's
13 Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, & Ms.
14 Dianne Jacobetz, MD, failed to conform to the aforementioned duty when in an effort to
15 force Plaintiffs Mr. and Mrs. Smith to stay at the hospital with Newborn baby J.A.S.
16 beyond when the Plaintiffs desired to remain, Defendants misinformed Plaintiffs Mr. and
17 Mrs. Smith that Newborn baby J.A.S. needed to be removed to the NICU because of

²⁴⁶ *Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁴⁷ *See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 breathing trouble (which was a newborn grunting to breastfeed), and Defendants never
2 informed Plaintiffs Mr. and Mrs. Smith, and, as Plaintiffs Mr. and Mrs. Smith later
3 discovered in medical records, that Newborn baby J.A.S. was at any point in danger of
4 falling into life-threatening circumstances if he were not admitted to the NICU for
5 specialized care and monitoring.

6 2895. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, St. Luke's
7 Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, & Ms.
8 Dianne Jacobetz, MD, actively and of their own volition, intentionally spoke to Mr. and
9 Mrs. Smith one narrative about their newborn baby that he was by-and-large healthy
10 and fine, and that his admittance to the NICU was precautionary; however, the narrative
11 that was being written in the medical records of Newborn baby J.A.S. and Plaintiff Mrs.
12 Smith was markedly different in tone and facts, making Newborn baby J.A.S. out to be
13 in more need of medical care than he actually required or was at least being reported to
14 require to Plaintiffs Mr. and Mrs. Smith.

15 2896. Negligence (4): Mr. and Mrs. Smith were in fact, separated from Newborn baby
16 J.A.S. against their will and consent and were left without control over the care of their
17 son Newborn baby J.A.S., including the ability to breastfeed Newborn baby J.A.S., have
18 skin-to-skin contact with Newborn baby J.A.S., and consent to Newborn baby J.A.S.'s
19 medical treatment.

20 2897. Defendants conveying one narrative to the Plaintiffs Mr. & Mrs. Smith verbally
21 and another narrative in the medical records of both Plaintiff Mrs. Smith and Newborn
22 baby J.A.S. was concocted in order to separate Plaintiffs Mr. and Mrs. Smith from their

1 newborn baby child who was in neonatal intensive care was sure to cause emotional
2 injuries to the Plaintiffs that were reasonably foreseeable to the Defendants.

3 2898. Plaintiffs Mr. and Mrs. Smith perceived “a contemporaneous perception of
4 tortuous injury to a close relative” because Plaintiffs Mr. and Mrs. Smith had to witness
5 each other go through the emotional turmoil of having a child go from “healthy” to
6 necessitating treatment in the NICU.

7 2899. As medical providers the Defendants had a special relationship with the mother
8 and father of a newborn child to take care of the feelings of that mother and father.

9 2900. Any situation in which parents are being separated from their newborn baby
10 against the parents’ will and consent is of the “intensely emotionally charged” sort that
11 gives rise to a duty to not negligently inflict emotional distress.

12 2901. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Newborn
13 baby J.A.S. who is their child, who was transferred to neonatal intensive care under
14 suspicious circumstances, whose parents were separated without cause from him
15 against their will and consent shortly after birth by the Defendants and their agents,
16 employees, or assigns, which was an “intensely emotionally charged” situation.

17 2902. Plaintiffs Mr. and Mrs. Smith being told one narrative verbally while another
18 narrative was being created about Plaintiffs Mr. and Mrs. Smith and Newborn baby
19 J.A.S. created the type of compensable harm that is worthy of relief because the harm
20 inflicted on Plaintiffs Mr. and Mrs. Smith was of the type that a reasonable person is not
21 expected to bear.

22 2903. Defendants St. Luke’s Hospital, Onsite Neonatal, St. Luke’s Physicians Group,
23 Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, & Ms. Dianne Jacobetz, MD’s

1 conduct violated Plaintiffs' rights under Pennsylvania common law negligent infliction of
2 emotional distress.

3 2904. Plaintiff Mrs. Smith has suffered the following physical manifestations of
4 emotional distress to the Defendant's alleged negligence: nightmares, night sweats,
5 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
6 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
7 reliving the incident, muscle tightness and back spasms, and body tremors.

8 2905. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
9 distress due to the Defendant's alleged negligence: intense headaches, depression,
10 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
11 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
12 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
13 face.

14 2906. Accordingly, and in connection with the alleged negligence of the Defendant
15 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
16 a third-party training program which demonstrates appropriate circumstances under
17 which a child should be reasonably separated from its natural parents, and the specific
18 legal procedures to adhere to for such a separation to take place, and that employees,
19 agents, and assigns of the Defendant Entities must be consistent with the same
20 narrative in the medical records of patients as they are when speaking to or otherwise
21 communicating with a patient.

22 2907. Accordingly, and in connection with the alleged negligence of the Defendant
23 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to

1 attend and pass a rigorous a third-party training program which demonstrates
2 appropriate circumstances under which a child should be reasonably separated from its
3 natural parents, and the specific legal procedures to adhere to for such a separation to
4 take place, and that employees, agents, and assigns of the Defendant Entities must be
5 consistent with the same narrative in the medical records of patients as they are when
6 speaking to or otherwise communicating with a patient.

7 2908. Accordingly, if a third-party cannot be found to render the appropriately rigorous
8 training course, then the Defendant Entities should create their own legal training
9 program which demonstrates appropriate circumstances under which a child should be
10 reasonably separated from its natural parents, and the specific legal procedures to
11 adhere to for such a separation to take place, and that employees, agents, and assigns
12 of the Defendant Entities must be consistent with the same narrative in the medical
13 records of patients as they are when speaking to or otherwise communicating with a
14 patient; and, before the created program is implemented, the program must be
15 approved by an appropriate court or federal agency for review; and, the program must
16 be implemented within 180 days of the valid judgment of this honorable Court.

17 2909. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
18 conduct, including but not limited to, emotional and psychological distress, pain and
19 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
20 appropriate compensatory damages to account for PTSD therapies and other related
21 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
22 request an amount of \$84,800 in compensatory damages per Defendant.

2910. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite Neonatal, St. Luke's Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, & Ms. Dianne Jacobetz, MD's and therefore, their ability to afford the appropriate training to avoid this egregious violation of the Pennsylvania Common Law, and, since harm was actually caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, St. Luke's Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, & Ms. Dianne Jacobetz, MD to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants Mr. Gilberto I. Santiago, MD, and Ms. Dianne R. Jacobetz, MD; \$5,000,000 per Defendants St. Luke's Physician Group, and Ms. Chaminie Wheeler, DO; and \$10,000,000 per Defendants St. Luke's Hospital, and Onsite Neonatal.

2911. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXX. Negligent Infliction of Emotional Distress IX

Mr. Smith v. St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,

Ms. Darla Frack, Ms. Dawn Hoffman & the "Hospital Leadership Team"

1 2912. Under Pennsylvania tort law, determination of negligent infliction of emotional
 2 distress liability depends on “whether the emotional injuries sustained by the plaintiff
 3 were reasonably foreseeable to the defendant.”²⁴⁸

4 2913. Pennsylvania recognizes that a plaintiff has to among other options, in order to
 5 sustain an NIED claim, have “a contemporaneous perception of tortuous injury to a
 6 close relative”.²⁴⁹

7 2914. An NIED claim can be supported in cases when “the defendant assumes a duty
 8 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
 9 being.” *Toney*, 36 A.3d at 92.

10 2915. As well, “special relationships must encompass an implied duty to care for the
 11 plaintiff's emotional well- being.” *Toney*, 36 A.3d at 95.

12 2916. In *The Law of Torts*, Professor Dobbs explained that caring for the emotional
 13 well-being of the plaintiff is a “duty to take care for the feelings of,” e.g., the mother of a
 14 stillborn child. (Citing *The Law of Torts*, § 29.15 (2000)).²⁵⁰

15 2917. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
 16 “intensely emotionally charged” sort for a court to recognize a pertinent “special
 17 relationship” giving rise not to negligently inflict emotional distress. *Id* at 20-21.

²⁴⁸*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²⁴⁹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁵⁰*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 2918. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
2 type that a reasonable person is not expected to bear. Toney, 36 A.3d at 95.

3 2919. The Plaintiff will have to demonstrate physical manifestations of emotional
4 distress.²⁵¹

5 2920. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
6 establish the traditional elements of a negligence claim. *Id.*

7 2921. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
8 or obligation recognized by the law, requiring the actor to conform to a certain standard
9 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
10 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
11 the interests of another.²⁵²

12 2922. Negligence (1): A private medical provider actor removing a newborn child from
13 the custody of its parents has a duty to only do so with a court order or with reasonable
14 suspicion of drug abuse on the part of the mother, and in the absence of either has a
15 duty to allow both natural parents to be with the newborn baby.

16 2923. Negligence (2): Defendants St. Luke’s Hospital, Mr. Steve Lanshe, Esq., Mr.
17 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership

²⁵¹ *Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁵² *See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 Team” failed to conform to the aforementioned duty when the Defendants removed
2 Plaintiffs Mr. and Mrs. Smith from Newborn baby J.A.S. by ejecting Plaintiff Mr. Smith
3 from Defendant St. Luke’s Hospital property against their will and consent without
4 reasonable suspicion of drug abuse by Mrs. Smith or a court order to separate Newborn
5 baby J.A.S. from his parents, and prohibited both parents to go back into the hospital
6 NICU.

7 2924. Negligence (3): Defendants St. Luke’s Hospital, Mr. Steve Lanshe, Esq., Mr.
8 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership
9 Team” actively and of their own volition, contacted Northampton County CYS, Monroe
10 County CYS, and the Bethlehem Police Department in a concerted effort to separate
11 Newborn baby J.A.S. from his parents Mr. and Mrs. Smith, and after over 24-hours of
12 time Mrs. Smith was allowed to be in the NICU with Newborn baby J.A.S., but Plaintiff
13 Mr. Smith was still restricted from Defendant St. Luke’s Hospital property under threat of
14 arrest.

15 2925. Negligence (4): Mr. and Mrs. Smith were in fact, separated from Newborn baby
16 J.A.S. against their will and consent and were left without control over the care of their
17 son Newborn baby J.A.S., including the ability to have skin-to-skin contact with newborn
18 baby J.A.S., and consent to newborn baby J.A.S.’s medical treatment, a separation
19 which continued for Plaintiff Mr. Smith for a period lasting some time longer than 72
20 hours, and did not allow him to be in the NICU to be with his postpartum wife and child
21 during a particularly difficult time as a family.

1 2926. Defendants refusing to let Plaintiff Mr. Smith be with his newborn baby who was
2 in neonatal intensive care was sure to cause emotional injuries to the Plaintiffs that were
3 reasonably foreseeable to the Defendants.

4 2927. Plaintiffs Mr. Smith perceived “a contemporaneous perception of tortuous injury
5 to a close relative” because Plaintiff Mr. Smith knew that Mrs. Smith was gravely
6 suffering under false accusations of methamphetamine abuse, and that Defendant St.
7 Luke’s Hospital had created a hostile atmosphere towards Mrs. Smith under which Mrs.
8 Smith was being constantly traumatized and Plaintiff Mr. Smith could not provide any in-
9 person comfort or relief to postpartum Mrs. Smith while she struggled to care for
10 Newborn baby J.A.S. in the NICU.

11 2928. As medical providers the Defendants had a special relationship with father of a
12 newborn child in a NICU to take care of the feelings of that father.

13 2929. Any situation in which parents are being told their newborn baby has rapidly gone
14 from “healthy” to necessitating treatment in the NICU, especially if the mother’s partner
15 is not available to comfort her due to actions taken by the medical provider, is of the
16 “intensely emotionally charged” sort that gives rise to a duty to not negligently inflict
17 emotional distress.

18 2930. In the instant case, Plaintiff Mr. Smith is closely related to Newborn baby J.A.S.
19 who is his natural child, who was transferred to neonatal intensive care under
20 suspicious circumstances, whose parents were separated without cause from him
21 against their will and consent shortly after birth by Defendants and their agents,
22 employees, or assigns, was an “intensely emotionally charged” situation.

1 2931. Plaintiff Mr. Smith not being available to comfort and care for his disabled
2 postpartum wife and newborn baby during a period of great emotional distress created
3 the type of compensable harm that is worthy of relief because the harm inflicted on
4 Plaintiff Mr. Smith was of the type that a reasonable person is not expected to bear.

5 2932. Defendants St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
6 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's"
7 conduct violated Plaintiffs' rights under Pennsylvania common law negligent infliction of
8 emotional distress.

9 2933. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
10 distress due to the Defendant's alleged negligence: intense headaches, depression,
11 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
12 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
13 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
14 face.

15 2934. Accordingly, and in connection with the alleged negligence of the Defendant
16 parties, Plaintiffs Mr. Smith requests all Defendant Entities be required to adopt a third-
17 party training program which demonstrates appropriate circumstances under which a
18 child should be reasonably separated from its natural parents, and the specific legal
19 procedures to adhere to for such a separation to take place, including when and when it
20 is not appropriate to remove parents from the premises altogether and what the
21 standard for allowing parents back on the property to visit their newborn children in the
22 NICU is if they have been ejected from the property.

1 2935. Accordingly, and in connection with the alleged negligence of the Defendant
2 parties, Plaintiff Mr. Smith requests all Defendant Persons be required to attend and
3 pass a rigorous a third-party training program which demonstrates appropriate
4 circumstances under which a child should be reasonably separated from its natural
5 parents, and the specific legal procedures to adhere to for such a separation to take
6 place, including when it is and when it is not appropriate to remove parents from the
7 premises altogether and what the standard for allowing parents back on the property to
8 visit their newborn children in the NICU is if they have been ejected from the property.

9 2936. Accordingly, if a third-party cannot be found to render the appropriately rigorous
10 training course, then the Defendant Entities should create their own legal training
11 program which demonstrates appropriate circumstances under which a child should be
12 reasonably separated from its natural parents, and the specific legal procedures to
13 adhere to for such a separation to take place, including when it is and when it is not
14 appropriate to remove parents from the premises altogether and what the standard for
15 allowing parents back on the property to visit their newborn children in the NICU is if
16 they have been ejected from the property; and, before the created program is
17 implemented, the program must be approved by an appropriate court or federal agency
18 for review; and, the program must be implemented within 180 days of the valid
19 judgment of this honorable Court.

20 2937. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
21 conduct, including but not limited to, emotional and psychological distress, pain and
22 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
23 appropriate compensatory damages to account for PTSD therapies and other related

1 treatments as they have been and will continue to be necessary; Plaintiff respectfully
2 requests an amount of \$59,500 in compensatory damages per Defendant.

3 2938. Given the substantial wealth of the Defendants St. Luke's Hospital, Mr. Steve
4 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
5 "Hospital Leadership Team" and therefore, their ability to afford the appropriate training
6 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm

7 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
8 continue to harm future postpartum families, and because the acts of the Defendants
9 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
10 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
11 punitive damages on Defendants St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr.

12 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
13 Team" to deter such Defendants from committing to such conduct in the future which
14 violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an
15 amount of \$5,000,000 in punitive damages per Defendants Mr. Steve Lanshe, Esq., Mr.
16 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman & the "Hospital Leadership
17 Team"; and \$10,000,000 per Defendant St. Luke's Hospital.

18 2939. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
19 any actual injury despite the deprivation of their common law rights, the Plaintiffs
20 respectfully request a nominal judgment of \$1.00.

21 **XXXI. Negligent Infliction of Emotional Distress X**

1 Mr. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
2 MD, & Ms. Cynthia Shultz, MD

3 2940. Under Pennsylvania tort law, determination of negligent infliction of emotional
4 distress liability depends on "whether the emotional injuries sustained by the plaintiff
5 were reasonably foreseeable to the defendant."²⁵³

6 2941. Pennsylvania recognizes that a plaintiff has to among other options, in order to
7 sustain an NIED claim, have "a contemporaneous perception of tortuous injury to a
8 close relative".²⁵⁴

9 2942. An NIED claim can be supported in cases when "the defendant assumes a duty
10 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
11 being." Toney, 36 A.3d at 92.

12 2943. As well, "special relationships must encompass an implied duty to care for the
13 plaintiff's emotional well- being." Toney, 36 A.3d at 95.

14 2944. In *The Law of Torts*, Professor Dobbs explained that caring for the emotional
15 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
16 stillborn child. (Citing *The Law of Torts*, § 29.15 (2000)).²⁵⁵

²⁵³*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²⁵⁴*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁵⁵*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 2945. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
2 “intensely emotionally charged” sort for a court to recognize a pertinent “special
3 relationship” giving rise not to negligently inflict emotional distress. *Id.* at 20-21.

4 2946. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
5 type that a reasonable person is not expected to bear. *Toney*, 36 A.3d at 95.

6 2947. The Plaintiff will have to demonstrate physical manifestations of emotional
7 distress.²⁵⁶

8 2948. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
9 establish the traditional elements of a negligence claim. *Id.*

10 2949. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
11 or obligation recognized by the law, requiring the actor to conform to a certain standard
12 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
13 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
14 the interests of another.²⁵⁷

15 2950. Negligence (1): A private medical provider actor removing a newborn child from
16 the custody of its parents has a duty to only do so with a court order or with reasonable
17 suspicion of drug abuse on the part of the mother, and without either the former or the

²⁵⁶ *Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁵⁷ *See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 latter on behalf of Defendant actors, the parents of such allegations have a valid logical
2 and emotional basis for contesting such allegations, and have a right to do so without
3 being painted as people capable of such violence that they should be removed from
4 hospital property under threat of arrest while their newborn baby resides in a NICU.

5 2951. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
6 Teresa Marlino, MD, & Ms. Cynthia Shultz, MD failed to conform to the aforementioned
7 duty when the Defendants removed Mr. and Mrs. Smith from Newborn baby J.A.S. by
8 ejecting Mr. and Mrs. Smith from Defendant St. Luke's Hospital's property against their
9 will and consent under threat of arrest without reasonable suspicion of drug abuse by
10 Mrs. Smith or a court order to separate Newborn baby J.A.S. from his parents, by
11 proceeding to paint the color of violence on the parents Mr. and Mrs. Smith to both
12 private parties and state officials to the degree that state officials removed Mr. and Mrs.
13 Smith from Defendant St. Luke's Hospital's property under threat of arrest, as well,
14 other state officials opened up an erroneous investigation for over a month into the
15 supposed violent nature of the Plaintiff Mr. Smith.

16 2952. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
17 Teresa Marlino, MD, & Ms. Cynthia Shultz, MD actively and of their own volition,
18 contacted Northampton County CYS, Monroe County CYS, and the Bethlehem Police
19 Department in a concerted effort to separate Newborn baby J.A.S. from his parents
20 Plaintiffs Mr. and Mrs. Smith, during which process the Defendants portrayed Mr. and
21 Mrs. Smith as people who had acted in a fashion so violent towards Defendant hospital
22 agents, employees, and assigns that Mr. and Mrs. Smith were locked out of the NICU,
23 which was guarded against their presence by numerous hospital security, removed from

1 Defendant St. Luke's Hospital's property against their will and consent under threat of
2 arrest, and then had over a month long investigation opened into the nature of the
3 supposed abusive nature alleged against Plaintiff Mr. Smith by yet another state entity.

4 2953. Negligence (4): Mr. and Mrs. Smith were in fact, separated from Newborn baby
5 J.A.S. against their will and consent and were left without control over the care of their
6 Newborn baby child J.A.S., including the ability to have skin-to-skin contact with
7 Newborn baby J.A.S., and consent to Newborn baby J.A.S.'s medical treatment.

8 2954. Defendants alleging that Plaintiff Mr. Smith was a person of violent character and
9 refusing to let Plaintiff Mr. Smith be with his newborn baby who was in neonatal
10 intensive care was sure to cause emotional injuries to the Plaintiffs that were reasonably
11 foreseeable to the Defendants.

12 2955. Plaintiffs Mr. Smith perceived "a contemporaneous perception of tortuous injury
13 to a close relative" because Plaintiff Mr. Smith knew that Mrs. Smith was gravely
14 suffering under false accusations of methamphetamine abuse, and that Defendant St.
15 Luke's Hospital had created a hostile atmosphere towards Mrs. Smith under which Mrs.
16 Smith was being constantly traumatized and Defendant Mr. Smith could not provide any
17 in-person comfort or relief to postpartum Mrs. Smith while she struggled to care for
18 Newborn baby J.A.S. in the NICU.

19 2956. As medical providers the Defendants had a special relationship with father of a
20 newborn child in a NICU to take care of the feelings of that father.

21 2957. Any situation in which parents are being told their newborn baby has rapidly gone
22 from "healthy" to necessitating treatment in the NICU, especially if the mother's partner
23 is not available to comfort her due to actions taken by the medical provider, is of the

1 “intensely emotionally charged” sort that gives rise to a duty to not negligently inflict
2 emotional distress.

3 2958. In the instant case, Plaintiff Mr. Smith is closely related to Newborn baby J.A.S.
4 who is his natural child, who was transferred to neonatal intensive care under
5 suspicious circumstances, whose parents were separated without cause from him
6 against their will and consent shortly after birth by Defendants and their agents,
7 employees, or assigns, was an “intensely emotionally charged” situation.

8 2959. Plaintiff Mr. Smith, by not being available to comfort and care for his disabled
9 postpartum wife and newborn baby during a period of great emotional distress created
10 the type of compensable harm that is worthy of relief because the harm inflicted on
11 Plaintiff Mr. Smith was of the type that a reasonable person is not expected to bear.

12 2960. Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
13 MD, & Ms. Cynthia Shultz, MD’s conduct violated Plaintiffs’ rights under Pennsylvania
14 common law negligent infliction of emotional distress.

15 2961. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
16 distress due to the Defendant’s alleged negligence: intense headaches, depression,
17 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
18 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
19 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
20 face.

21 2962. Accordingly, and in connection with the alleged negligence of the Defendant
22 parties, Plaintiffs Mr. Smith requests all Defendant Entities be required to adopt a third-
23 party training program which demonstrates appropriate circumstances under which a

1 child should be reasonably separated from its natural parents, and the specific legal
2 procedures to adhere to for such a separation to take place, including when and when it
3 is not appropriate to remove parents from the premises altogether and what the
4 standard for allowing parents back on the property to visit their newborn children in the
5 NICU is if they have been ejected from the property.

6 2963. Accordingly, and in connection with the alleged negligence of the Defendant
7 parties, Plaintiff Mr. Smith requests all Defendant Persons be required to attend and
8 pass a rigorous a third-party training program which demonstrates appropriate
9 circumstances under which a child should be reasonably separated from its natural
10 parents, and the specific legal procedures to adhere to for such a separation to take
11 place, including when and when it is not appropriate to remove parents from the
12 premises altogether and what the standard for allowing parents back on the property to
13 visit their newborn children in the NICU is if they have been ejected from the property.

14 2964. Accordingly, if a third-party cannot be found to render the appropriately rigorous
15 training course, then the Defendant Entities should create their own legal training
16 program which demonstrates appropriate circumstances under which a child should be
17 reasonably separated from its natural parents, and the specific legal procedures to
18 adhere to for such a separation to take place, including accurately portraying the
19 demeanor of the parents of the newborn child as non-violent, so long as they did not act
20 in a violent manner; and, before the created program is implemented, the program must
21 be approved by an appropriate court or federal agency for review; and, the program
22 must be implemented within 180 days of the valid judgment of this honorable Court.

1 2965. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
2 conduct, including but not limited to, emotional and psychological distress, pain and
3 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
4 appropriate compensatory damages to account for PTSD therapies and other related
5 treatments as they have been and will continue to be necessary; Plaintiff respectfully
6 requests an amount of \$59,500 in compensatory damages per Defendant.

7 2966. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
8 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD and
9 therefore, their ability to afford the appropriate training to avoid this egregious violation
10 of the Pennsylvania Common Law, and, since harm was actually caused to the current
11 Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum
12 families, and because the acts of the Defendants and their agents, assigns, or
13 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
14 the Plaintiffs respectfully request the imposition of punitive damages on Defendants St.
15 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia
16 Shultz, MD to deter such Defendants from committing to such conduct in the future
17 which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully
18 request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's
19 Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz,
20 MD.

21 2967. In the unlikely event that the jury does not find that Plaintiff Mr. Smith suffered
22 any actual injury despite the deprivation of their common law rights, the Plaintiff
23 respectfully requests a nominal judgment of \$1.00.

1 **XXXII. Negligent Infliction of Emotional Distress XI**

2 Mrs. Smith v. St. Luke's Hospital & Social Worker "Vanessa"

3 2968. Under Pennsylvania tort law, determination of negligent infliction of emotional
4 distress liability depends on "whether the emotional injuries sustained by the plaintiff
5 were reasonably foreseeable to the defendant."²⁵⁸

6 2969. Pennsylvania recognizes that a plaintiff has to among other options, in order to
7 sustain an NIED claim, have "a contemporaneous perception of tortuous injury to a
8 close relative".²⁵⁹

9 2970. An NIED claim can be supported in cases when "the defendant assumes a duty
10 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
11 being." Toney, 36 A.3d at 92.

12 2971. As well, "special relationships must encompass an implied duty to care for the
13 plaintiff's emotional well- being." Toney, 36 A.3d at 95.

14 2972. In The Law of Torts, Professor Dobbs explained that caring for the emotional
15 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
16 stillborn child. (Citing The Law of Torts, § 29.15 (2000)).²⁶⁰

²⁵⁸*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²⁵⁹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12,
2017).

²⁶⁰*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 2973. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
2 “intensely emotionally charged” sort for a court to recognize a pertinent “special
3 relationship” giving rise not to negligently inflict emotional distress. *Id.* at 20-21.

4 2974. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
5 type that a reasonable person is not expected to bear. *Toney*, 36 A.3d at 95.

6 2975. The Plaintiff will have to demonstrate physical manifestations of emotional
7 distress.²⁶¹

8 2976. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
9 establish the traditional elements of a negligence claim. *Id.*

10 2977. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
11 or obligation recognized by the law, requiring the actor to conform to a certain standard
12 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
13 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
14 the interests of another.²⁶²

15 2978. Negligence (1): A private medical provider actor removing a newborn child from
16 the custody of its parents has a duty to not increase the amount of mental anguish of

²⁶¹ *Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁶² *See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 the parents by telling the parents that they retain rights to their child while the parents
2 are routinely witnessing parental rights being taken away or extinguished.

3 2979. Negligence (2): Defendants St. Luke's Hospital and Hospital Social Worker
4 "Vanessa" failed to conform to the aforementioned duty when the Defendants attempted
5 to reaffirm to Plaintiff parents Mr. and Mrs. Smith that they had care and control over the
6 medical decisions and general welfare of their child, while simultaneously having the
7 parents removed from the property, having parental consent continually denied in favor
8 of Defendants' desires, Mr. Smith not being allowed to visit his child in the NICU after
9 April 9th at all, around the clock guarding of Plaintiff Mrs. Smith while she was in the
10 NICU, and not being able to leave the hospital with their child.

11 2980. Negligence (3): Defendants St. Luke's Hospital and Hospital Social Worker
12 "Vanessa" actively and of her own volition, communicated to Plaintiff Mrs. Smith, upon
13 returning to the NICU to care for Newborn baby J.A.S. that Plaintiff Mrs. Smith had
14 "custody", including the right to make decisions concerning the health and well-being of
15 Newborn baby J.A.S. despite the fact that under the current circumstances and
16 atmosphere Plaintiff Mrs. Smith clearly did not have custody of her child, nor the right to
17 make decisions for child Newborn baby J.A.S. that the Defendants did not 100% agree
18 with without risk of ejection from the NICU and loss of access to Newborn baby J.A.S.
19 again.

20 2981. Negligence (4): Mr. and Mrs. Smith were in fact, separated from Newborn baby
21 J.A.S. against their will and consent and were left without control over the care of their
22 son Newborn baby J.A.S., including the ability to breastfeed Newborn baby J.A.S., have

1 skin-to-skin contact with Newborn baby J.A.S., and consent to Newborn baby J.A.S.'s
2 medical treatment.

3 2982. Defendants adding mental anguish through insensitive verbiage towards the
4 mother of a newborn baby who was in neonatal intensive care was sure to cause
5 emotional injuries to the Plaintiff that were reasonably foreseeable to the Defendants.

6 2983. Plaintiff Mrs. Smith suffered the physical impact of the negligent words as the
7 emotions of those words manifested themselves through traumatic physical symptoms.

8 2984. As medical providers the Defendants had a special relationship with the mother
9 of a newborn child in a NICU to take care of the feelings of that mother.

10 2985. Any situation in which parents are being told they have care and control over
11 their newborn baby when the actions of the medical providers are paramount to their
12 own is one of the "intensely emotionally charged" sort that gives rise to a duty to not
13 negligently inflict emotional distress.

14 2986. Mr. and Mrs. Smith being told one narrative verbally while another narrative was
15 being created about Mr. and Mrs. Smith and Newborn baby J.A.S. created the type of
16 compensable harm that is worthy of relief because the harm inflicted on Plaintiff Mrs.
17 Smith was of the type that a reasonable person is not expected to bear.

18 2987. Defendants St. Luke's Hospital and Hospital Social Worker "Vanessa's" conduct
19 violated Plaintiffs' rights under Pennsylvania common law negligent infliction of
20 emotional distress.

21 2988. Plaintiff Mrs. Smith has suffered the following physical manifestations of
22 emotional distress to the Defendant's alleged negligence: nightmares, night sweats,
23 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby

1 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
2 reliving the incident, muscle tightness and back spasms, and body tremors.

3 2989. Accordingly, and in connection with the alleged negligence of the Defendant
4 parties, Plaintiff Mrs. Smith and requests all Defendant Entities be required to adopt a
5 third-party training program which demonstrates appropriate circumstances under which
6 a child should be reasonably separated from its natural parents, and the specific legal
7 procedures to adhere to for such a separation to take place, including how not to inflict
8 additional trauma by making statements that are inverse to the reality facing the
9 parents.

10 2990. Accordingly, and in connection with the alleged negligence of the Defendant
11 parties, Plaintiff Mrs. Smith and newborn baby J.A.S. request all Defendant Persons be
12 required to attend and pass a rigorous a third-party training program which
13 demonstrates appropriate circumstances under which a child should be reasonably
14 separated from its natural parents, and the specific legal procedures to adhere to for
15 such a separation to take place, including how not to inflict additional trauma by making
16 statements that are inverse to the reality facing the parents.

17 2991. Accordingly, if a third-party cannot be found to render the appropriately rigorous
18 training course, then the Defendant Entities should create their own legal training
19 program which demonstrates appropriate circumstances under which a child should be
20 reasonably separated from its natural parents, and the specific legal procedures to
21 adhere to for such a separation to take place, including how not to inflict additional
22 trauma by making statements that are inverse to the reality facing the parents; and,
23 before the created program is implemented, the program must be approved by an

1 appropriate court or federal agency for review; and, the program must be implemented
2 within 180 days of the valid judgment of this honorable Court.

3 2992. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
4 conduct, including but not limited to, emotional and psychological distress, pain and
5 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
6 appropriate compensatory damages to account for PTSD therapies and other related
7 treatments as they have been and will continue to be necessary; Plaintiff respectfully
8 requests an amount of \$59,500 in compensatory damages per Defendant.

9 2993. Given the substantial wealth of the Defendant St. Luke's Hospital, and therefore,
10 its ability to afford the appropriate training to avoid this egregious violation of the
11 Pennsylvania Common Law, and, since harm was actually caused to the current
12 Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum
13 families, and because the acts of the Defendants and their agents, assigns, or
14 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
15 the Plaintiffs respectfully request the imposition of punitive damages on Defendant St.
16 Luke's Hospital to deter such Defendant from committing to such conduct in the future
17 which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully
18 request an amount of \$1,000,000 in punitive damages per Defendant Social Worker
19 "Vanessa"; and \$10,000,000 per Defendant St. Luke's Hospital.

20 2994. In the unlikely event that the jury does not find that Plaintiff Mrs. Smith suffered
21 any actual injury despite the deprivation of their common law rights, the Plaintiff
22 respectfully requests a nominal judgment of \$1.00.

23 **XXXIII. Negligent Infliction of Emotional Distress XII**

1 Mr. & Mrs. Smith v. St. Luke's Hospital, "Security Guard 'Freddy'", "Security Guard
 2 'Joe'", "Security Guard 'Nate'", "Security Supervisor 'Unknown'", "Head of
 3 Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq.,
 4 Ms. Darla Frack, Ms. Dawn Hoffman & the "Hospital Leadership Team"

5 2995. Under Pennsylvania tort law, determination of negligent infliction of emotional
 6 distress liability depends on "whether the emotional injuries sustained by the plaintiff
 7 were reasonably foreseeable to the defendant."²⁶³

8 2996. Pennsylvania recognizes that a plaintiff has to among other options, in order to
 9 sustain an NIED claim, have "a contemporaneous perception of tortuous injury to a
 10 close relative".²⁶⁴

11 2997. An NIED claim can be supported in cases when "the defendant assumes a duty
 12 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
 13 being." Toney, 36 A.3d at 92.

14 2998. As well, "special relationships must encompass an implied duty to care for the
 15 plaintiff's emotional well-being." Toney, 36 A.3d at 95.

²⁶³*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²⁶⁴*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

1 2999. In *The Law of Torts*, Professor Dobbs explained that caring for the emotional
2 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
3 stillborn child. (Citing *The Law of Torts*, § 29.15 (2000)).²⁶⁵

4 3000. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
5 "intensely emotionally charged" sort for a court to recognize a pertinent "special
6 relationship" giving rise not to negligently inflict emotional distress. *Id.* at 20-21.

7 3001. Plaintiff must demonstrate "compensable emotional harm" which is harm of a
8 type that a reasonable person is not expected to bear. *Toney*, 36 A.3d at 95.

9 3002. The Plaintiff will have to demonstrate physical manifestations of emotional
10 distress.²⁶⁶

11 3003. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
12 establish the traditional elements of a negligence claim. *Id.*

13 3004. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
14 or obligation recognized by the law, requiring the actor to conform to a certain standard
15 of conduct; (2) a failure to conform to the required standard; (3) a causal connection

²⁶⁵*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

²⁶⁶*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

1 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
2 the interests of another.²⁶⁷

3 3005. Negligence (1): A private medical provider actor placing security guards to watch
4 a mother, including during breastfeeding, has a duty to use security staff which identifies
5 with the female gender.

6 3006. Negligence (2): Defendants St. Luke's Hospital, "Security Guard 'Freddy'",
7 Security Guard 'Joe'", Security Guard 'Nate'" "Security Supervisor 'Unknown'", "Head of
8 Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
9 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" failed to conform
10 to the aforementioned duty when the Defendants placed around the clock male security
11 guards to observe Plaintiff Mrs. Smith while she was in the NICU from when she was
12 allowed to return to be with Newborn baby J.A.S. until Plaintiff Mrs. Smith and Newborn
13 baby J.A.S. were discharged two days later.

14 3007. Negligence (3): Defendants St. Luke's Hospital, "Security Guard 'Freddy'",
15 Security Guard 'Joe'", Security Guard 'Nate'" "Security Supervisor 'Unknown'", "Head of
16 Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
17 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" actively and of
18 their own volition, placed male security guards around the clock at Newborn baby

²⁶⁷ See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 J.A.S.'s NICU room whenever Plaintiff Mrs. Smith was present, and who followed
2 Plaintiff Mrs. Smith to the bathroom down the hall.

3 3008. Negligence (4): Plaintiff Mrs. Smith felt humiliated, embarrassed, helpless, and
4 ashamed to have a male security guard constantly monitoring her including when she
5 breastfed Newborn baby J.A.S.; such actions also prevented skin-to-skin contact with
6 Newborn baby J.A.S. given the aforementioned emotions elicited by the presence of the
7 male security guard; Plaintiff Mr. Smith felt humiliated, embarrassed, helpless, and
8 ashamed to have a male security guard constantly monitoring his wife, including while
9 she breastfed.

10 3009. Defendants placing around the clock guards at Newborn baby J.A.S.'s NICU pod,
11 including while mother of a newborn baby child was breastfeeding, who was in neonatal
12 intensive care, was sure to cause emotional injuries to the Plaintiffs that were
13 reasonably foreseeable to the Defendants.

14 3010. Plaintiff Mrs. Smith suffered the physical impact of the negligent words as the
15 emotions of those words manifested themselves through traumatic physical symptoms;
16 and, Plaintiff Mr. Smith perceived "a contemporaneous perception of tortuous injury to a
17 close relative" because he knew that although she could now be with their child in the
18 NICU, Plaintiff Mrs. Smith was constantly being humiliated by not only being treated like
19 a mother and human being who abuses babies, but he knew that as a particularly
20 conservative woman concerning nudity and privacy that the depth of embarrassment
21 and humiliation that Plaintiff Mrs. Smith was suffering was unbearably difficult, thereby
22 causing Plaintiff Mr. Smith mental anguish as well.

1 3011. As medical providers the Defendants had a special relationship with the mother
2 and father of a newborn child in a NICU to take care of the feelings of that mother and
3 father.

4 3012. Any situation in which parents are being demonstrably told that they have to be
5 monitored for abusive behavior towards their newborn baby is one of the “intensely
6 emotionally charged” sort that gives rise to a duty to not negligently inflict emotional
7 distress.

8 3013. Plaintiff Mrs. Smith being monitored around the clock by solely male security
9 guards, even while she breastfed created the type of compensable harm that is worthy
10 of relief because the harm inflicted on Plaintiff Mrs. Smith was of the type that a
11 reasonable person is not expected to bear.

12 3014. Defendants St. Luke’s Hospital, “Security Guard ‘Freddy’”, Security Guard ‘Joe’”,
13 Security Guard ‘Nate’” “Security Supervisor ‘Unknown’”, “Head of Hospital Security
14 ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
15 Dawn Hoffman, and the “Hospital Leadership Team’s” conduct violated Plaintiffs’ rights
16 under Pennsylvania common law negligent infliction of emotional distress.

17 3015. Plaintiff Mrs. Smith has suffered the following physical manifestations of
18 emotional distress to the Defendant’s alleged negligence: nightmares, night sweats,
19 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
20 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
21 reliving the incident, muscle tightness and back spasms, and body tremors.

22 3016. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
23 distress due to the Defendant’s alleged negligence: intense headaches, depression,

1 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
2 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
3 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
4 face.

5 3017. Accordingly, and in connection with the alleged negligence of the Defendant
6 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
7 a third-party training program which demonstrates appropriate circumstances under
8 which a child should be reasonably separated from its natural parents, and the specific
9 legal procedures to adhere to for such a separation to take place, including that if a
10 presence of security is deemed required by the private medical provider that such a
11 presence must be an individual who identifies with the female gender.

12 3018. Accordingly, and in connection with the alleged negligence of the Defendant
13 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
14 attend and pass a rigorous a third-party training program which demonstrates
15 appropriate circumstances under which a child should be reasonably separated from its
16 natural parents, and the specific legal procedures to adhere to for such a separation to
17 take place, including that if a presence of security is deemed required by the private
18 medical provider that such a presence must be an individual who identifies with the
19 female gender.

20 3019. Accordingly, if a third-party cannot be found to render the appropriately rigorous
21 training course, then the Defendant Entities should create their own legal training
22 program which demonstrates appropriate circumstances under which a child should be
23 reasonably separated from its natural parents, and the specific legal procedures to

1 adhere to for such a separation to take place, including that if a presence of security is
2 deemed required by the private medical provider that such a presence must be an
3 individual who identifies with the female gender; and, before the created program is
4 implemented, the program must be approved by an appropriate court or federal agency
5 for review; and, the program must be implemented within 180 days of the valid
6 judgment of this honorable Court.

7 3020. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
8 conduct, including but not limited to, emotional and psychological distress, pain and
9 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
10 appropriate compensatory damages to account for PTSD therapies and other related
11 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
12 request an amount of \$84,800 in compensatory damages per Defendant.

13 3021. Given the substantial wealth of the Defendants St. Luke's Hospital, "Security
14 Guard 'Freddy'", Security Guard 'Joe'", Security Guard 'Nate'" "Security Supervisor
15 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert
16 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
17 Team," and therefore, its ability to afford the appropriate training to avoid this egregious
18 violation of the Pennsylvania Common Law, and, since harm was actually caused to the
19 current Plaintiff Smith Family, and since harm is likely to continue to harm future
20 postpartum families, and because the acts of the Defendants and their agents, assigns,
21 or employees callously disregarded the Plaintiff's rights in a reckless and wanton
22 manner, the Plaintiffs respectfully request the imposition of punitive damages on
23 Defendants St. Luke's Hospital, "Security Guard 'Freddy'", Security Guard 'Joe'",

1 Security Guard ‘Nate’” “Security Supervisor ‘Unknown’”, “Head of Hospital Security
 2 ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
 3 Dawn Hoffman, and the “Hospital Leadership Team” to deter such Defendant from
 4 committing to such conduct in the future which violates Commonwealth of Pennsylvania
 5 Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive
 6 damages per Defendants “Security Guard ‘Freddy’”, “Security Guard ‘Joe’”, and
 7 “Security Guard ‘Nate’”; \$5,000,000 per Defendants “Security Supervisor ‘Unknown’”,
 8 “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
 9 Esq., Ms. Darla Frack, Ms. Dawn Hoffman & the “Hospital Leadership Team”; and
 10 \$10,000,000 per Defendant St. Luke’s Hospital.

11 3022. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
 12 suffered any actual injury despite the deprivation of their common law rights, the
 13 Plaintiffs respectfully request a nominal judgment of \$1.00.

14 **XXXIV. Negligent Infliction of Emotional Distress XIII**

15 Mr. & Mrs. Smith v. St. Luke’s Hospital

16 3023. Under Pennsylvania tort law, determination of negligent infliction of emotional
 17 distress liability depends on “whether the emotional injuries sustained by the plaintiff
 18 were reasonably foreseeable to the defendant.”²⁶⁸

²⁶⁸*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

1 3024. Pennsylvania recognizes that a plaintiff has to among other options, in order to
2 sustain an NIED claim, have “a contemporaneous perception of tortuous injury to a
3 close relative”.²⁶⁹

4 3025. An NIED claim can be supported in cases when "the defendant assumes a duty
5 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
6 being." Toney, 36 A.3d at 92.

7 3026. As well, "special relationships must encompass an implied duty to care for the
8 plaintiff's emotional well- being." Toney, 36 A.3d at 95.

9 3027. In The Law of Torts, Professor Dobbs explained that caring for the emotional
10 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
11 stillborn child. (Citing The Law of Torts, § 29.15 (2000)).²⁷⁰

12 3028. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
13 “intensely emotionally charged” sort for a court to recognize a pertinent “special
14 relationship” giving rise not to negligently inflict emotional distress. Id at 20-21.

15 3029. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
16 type that a reasonable is not person expected to bear. Toney, 36 A.3d at 95.

²⁶⁹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁷⁰*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 3030. The Plaintiff will have to demonstrate physical manifestations of emotional
2 distress.²⁷¹

3 3031. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
4 establish the traditional elements of a negligence claim. *Id.*

5 3032. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
6 or obligation recognized by the law, requiring the actor to conform to a certain standard
7 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
8 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
9 the interests of another.²⁷²

10 3033. Negligence (1): A private medical provider actor has a duty to provide postpartum
11 mothers with a child in a NICU with reasonable accommodations for comfort, especially
12 if the postpartum mother has a disability that prevents the function of walking normally.

13 3034. Negligence (2): Defendant St. Luke's Hospital failed to conform to the
14 aforementioned duty when the Defendant failed to provide Plaintiff Mrs. Smith with a
15 place to sleep in the NICU, no bathroom in Newborn baby J.A.S.'s NICU pod, forcing
16 Plaintiff Mrs. Smith to use a bathroom approximately 70-80 ft. away (given injuries to the
17 vaginal region a postpartum mother use a restroom for more than just excretion of

²⁷¹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁷²*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 waste), not a single handicap accessible door in all of the NICU which could be opened
2 by Plaintiff Mrs. Smith alone without the help of others while using a wheelchair, and no
3 privacy to check on postpartum functions within the NICU pod because of male guards
4 and nurse intrusions as well as one glass panel acting as a wall, on the other side of
5 which sat the male security guards and typically one or more nurses.

6 3035. Negligence (3): Defendant St. Luke's Hospital actively and of their own volition,
7 did not provide any reasonable accommodations for a postpartum mother attending to
8 her newborn child in a NICU who had an obvious difficulty locomoting.

9 3036. Negligence (4): Plaintiff Mrs. Smith suffered both mentally and physically from
10 the lack of reasonable accommodations provided to Plaintiff Mrs. Smith, which are, but
11 not limited to: additional knee pain than Plaintiff Mrs. Smith typically feels, pelvic pain,
12 increased and prolonged vaginal bleeding, depression and general feeling of disgust
13 from not being able to regularly tend to her own postpartum needs, back and leg pain,
14 insomnia from not having place to lay down, fatigue, and body aches.

15 3037. Plaintiff Mrs. Smith has a knee injury which has required surgery in the past for
16 which she wears an obviously recognizable knee brace whenever she walks; her knee
17 surgery was twice performed at a St. Luke's Hospital facility.

18 3038. By Defendants never providing any accommodations for Plaintiff Mrs. Smith as a
19 postpartum mother with a knee disability, who was in neonatal intensive care with
20 newborn baby, was sure to cause emotional injuries to the Plaintiffs that were
21 reasonably foreseeable to the Defendants.

22 3039. Plaintiff Mrs. Smith suffered the physical impact of increased pain and discomfort
23 to her entire body, and especially in her injured knee; and, Plaintiff Mr. Smith perceived

1 “a contemporaneous perception of tortuous injury to a close relative” because he knew
2 that although she could now be with their child in the NICU Mrs. Smith was constantly in
3 non-stop pain and discomfort both physical and mental due to Plaintiff Mrs. Smith's
4 constantly poor treatment considering her disability, thereby causing Plaintiff Mr. Smith
5 mental anguish as well.

6 3040. As medical providers the Defendants had a special relationship with the mother
7 and father of a newborn child in a NICU to take care of the feelings of that mother and
8 father.

9 3041. Any situation in which parents are literally afraid of asking hospital staff for
10 anything, even so much as a pillow, because of a fear of being ejected from Defendant
11 St. Luke's Hospital again at any moment without her newborn baby is a situation of the
12 “intensely emotionally charged” sort that gives rise to a duty to not negligently inflict
13 emotional distress.

14 3042. Plaintiff Mrs. Smith being in physical pain around the clock because she was
15 afraid to ask Defendant St. Luke's Hospital staff for basic accommodations created the
16 type of compensable harm that is worthy of relief because the harm inflicted on Plaintiff
17 Mrs. Smith was of the type that a reasonable person is not expected to bear.

18 3043. Defendant St. Luke's Hospital's conduct violated Plaintiffs' rights under
19 Pennsylvania common law negligent infliction of emotional distress.

20 3044. Plaintiff Mrs. Smith has suffered the following physical manifestations of
21 emotional distress to the Defendant's alleged negligence: nightmares, night sweats,
22 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby

1 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
2 reliving the incident, muscle tightness and back spasms, and body tremors.

3 3045. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
4 distress due to the Defendant's alleged negligence: intense headaches, depression,
5 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
6 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
7 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
8 face.

9 3046. Accordingly, and in connection with the alleged negligence of the Defendant
10 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
11 a third-party training program which demonstrates the appropriate circumstances
12 reasonable accommodations should be offered in to a postpartum mother, and what
13 those reasonable accommodations should be.

14 3047. Accordingly, and in connection with the alleged negligence of the Defendant
15 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
16 attend and pass a rigorous a third-party training program which demonstrates the
17 appropriate circumstances reasonable accommodations should be offered in to a
18 postpartum mother, and what those reasonable accommodations should be.

19 3048. Accordingly, if a third-party cannot be found to render the appropriately rigorous
20 training course, then the Defendant Entities should create their own legal training
21 program on when it is it is appropriate to offer reasonable accommodations to a
22 postpartum disabled mother and what the nature of those accommodations should be;
23 and, before the created program is implemented, the program must be approved by an

1 appropriate court or federal agency for review; and, the program must be implemented
2 within 180 days of the valid judgment of this honorable Court.

3 3049. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
4 conduct, including but not limited to, emotional and psychological distress, pain and
5 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
6 appropriate compensatory damages to account for PTSD therapies and other related
7 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
8 request an amount of \$84,800 in compensatory damages per Defendant.

9 3050. Given the substantial wealth of the Defendant St. Luke's Hospital, and therefore,
10 its ability to afford the appropriate training to avoid this egregious violation of the
11 Pennsylvania Common Law, and, since harm was actually caused to the current
12 Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum
13 families, and because the acts of the Defendants and their agents, assigns, or
14 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
15 the Plaintiffs respectfully request the imposition of punitive damages on Defendant St.
16 Luke's Hospital to deter such Defendant from committing to such conduct in the future
17 which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully
18 request an amount of \$10,000,000 in punitive damages per Defendant St. Luke's
19 Hospital.

20 3051. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
21 suffered any actual injury despite the deprivation of their common law rights, the
22 Plaintiffs respectfully request a nominal judgment of \$1.00.

23 **XXXV. Negligent Infliction of Emotional Distress XIV**

1 Smith, et al. v. Monroe County, Ms. Adelaide W. Grace, Mr. Tim Shaw & Mr. Jorge

2 Manteria

3 3052. Under Pennsylvania tort law, determination of negligent infliction of emotional
4 distress liability depends on "whether the emotional injuries sustained by the plaintiff
5 were reasonably foreseeable to the defendant."²⁷³

6 3053. Pennsylvania recognizes that a plaintiff has to among other options, in order to
7 sustain an NIED claim, have "a contemporaneous perception of tortuous injury to a
8 close relative".²⁷⁴

9 3054. An NIED claim can be supported in cases when "the defendant assumes a duty
10 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
11 being." Toney, 36 A.3d at 92.

12 3055. As well, "special relationships must encompass an implied duty to care for the
13 plaintiff's emotional well- being." Toney, 36 A.3d at 95.

14 3056. In *The Law of Torts*, Professor Dobbs explained that caring for the emotional
15 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
16 stillborn child. (Citing *The Law of Torts*, § 29.15 (2000)).²⁷⁵

²⁷³*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²⁷⁴*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁷⁵*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 3057. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
2 “intensely emotionally charged” sort for a court to recognize a pertinent “special
3 relationship” giving rise not to negligently inflict emotional distress. *Id* at 20-21.

4 3058. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
5 type that a reasonable person is not expected to bear. *Toney*, 36 A.3d at 95.

6 3059. The Plaintiff will have to demonstrate physical manifestations of emotional
7 distress.²⁷⁶

8 3060. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
9 establish the traditional elements of a negligence claim. *Id*.

10 3061. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
11 or obligation recognized by the law, requiring the actor to conform to a certain standard
12 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
13 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
14 the interests of another.²⁷⁷

15 3062. Negligence (1): A state actor investigating parents for illegal substance abuse
16 has a duty to only do so with a court order or with reasonable suspicion of drug abuse,

²⁷⁶*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁷⁷*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 and, as well, has a duty not to reject and repudiate multiple sources of evidence
2 exculpating the parents suspected of substance abuse.

3 3063. Negligence (2): Defendants Monroe County through its Offices of Children and
4 Youth Services, and its agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim
5 Shaw, and Mr. Jorge Manteria failed to conform to the aforementioned duties when the
6 Defendants ignored critical facts which allowed them to immediately surmise that
7 Plaintiff Mrs. Smith did not consume illegal methamphetamine, including but not limited
8 to: (1) neither Plaintiffs Mrs. Smith nor Newborn baby J.A.S. tested positive for
9 methamphetamine while at St. Luke's Hospital; (2) the umbilical cord that connected
10 Plaintiff Mrs. Smith to Plaintiff Newborn baby J.A.S. did not test positive for
11 methamphetamine; (3) neither Plaintiff Mrs. Smith nor Newborn baby J.A.S. suffered
12 any signs or symptoms of methamphetamine withdrawal; (4) Defendant Monroe County
13 CYS conducting their own urinary drug screen before Plaintiff Mrs. Smith left the
14 hospital which also tested negative for methamphetamine; (5) an inspection of the home
15 environment by Defendant Mr. Jorge Manteria who was satisfied that the home was a
16 safe place to bring a newborn baby; (6) Defendant Mr. Jorge Manteria did not suspect
17 that anyone in the Smith Family home consumed illegal methamphetamine; (7) more
18 than one home visit by Defendant Mr. Jorge Manteria who verbally concluded time and
19 again that the Smith Family home was a safe environment for children; (8) access to
20 Plaintiff Mrs. Smith's medical records which documented the fact that Mrs. Smith was
21 legally prescribed Vyvanse, an amphetamine that had been approved by three
22 independent doctors for use during her pregnancy; (9) that neither Plaintiffs Mr. nor Mrs.
23 Smith were individuals of any violent nature; (10) and ultimately without reasonable

1 suspicion of drug abuse by Plaintiffs Mr. or Mrs. Smith, and yet the investigation into the
2 Smith Family lasted week after week.

3 3064. Negligence (3): Defendants Monroe County through its Offices of Children and
4 Youth Services, and its agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim
5 Shaw, and Mr. Jorge Manteria actively and of their own volition, continued to harass the
6 Smith Family through repeated home visits, multiple requests for drug tests, and by
7 invading the privacy, sanctity, and feelings of security within the household despite
8 copious amounts of evidence that neither Plaintiffs Mr. or Mrs. Smith presented a
9 danger to Plaintiff Newborn baby J.A.S. or any of their other children.

10 3065. Negligence (4): Plaintiffs Mr. and Mrs. Smith were investigated by the state
11 agency Monroe County Office of Children and Youth services costing unnecessary
12 attorney's fees for each home visit by Defendant Mr. Jorge Manteria, mental anguish
13 and anxiety related to each home visit by Children and Youth Services which has
14 manifested in physical symptoms, as well as all fees and costs relating to present and
15 future psychological counseling for Mr. and Mrs. Smith.

16 3066. Defendants continuing to investigate the Smith Family when the Defendants
17 knew or should have known that there was not any reasonable basis to do so, was sure
18 to cause emotional injuries to the Plaintiffs that were reasonably foreseeable to the
19 Defendants.

20 3067. Plaintiffs Mr. & Mrs. Smith perceived "a contemporaneous perception of tortuous
21 injury to a close relative" because they had to week after week, watch each other go
22 through the unnecessary and invasive processes of having Monroe County CYS use its
23 agents, employees, or assigns to investigate the Smith Family for signs of child abuse.

1 3068. As state actors and representatives of an organization which routinely deprives
2 parents of their children, the Defendants had a special relationship with the mother and
3 father of a newborn child to take care of the feelings of that mother and father.

4 3069. Any situation in which parents are literally afraid of losing not only their newborn
5 child, but their other children as well at any moment is a situation of the “intensely
6 emotionally charged” sort that gives rise to a duty to not negligently inflict emotional
7 distress.

8 3070. Plaintiffs Mr. and Mrs. Smith having to be placed in constant fear of losing their
9 children to the state without cause created the type of compensable harm that is worthy
10 of relief because the harm inflicted on Plaintiffs Mr. and Mrs. Smith was of the type that
11 a reasonable person is not expected to bear.

12 3071. Defendant Monroe County through its Offices of Children and Youth Services,
13 and its agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim Shaw, and Mr.
14 Jorge Monteria’s conduct violated Plaintiffs’ rights under Pennsylvania common law
15 negligent infliction of emotional distress.

16 3072.

17 3073. Plaintiff Mrs. Smith has suffered the following physical manifestations of
18 emotional distress to the Defendant’s alleged negligence: nightmares, night sweats,
19 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
20 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
21 reliving the incident, muscle tightness and back spasms, and body tremors.

22 3074. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
23 distress due to the Defendant’s alleged negligence: intense headaches, depression,

1 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
2 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
3 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
4 face.

5 3075. Accordingly, and in connection with the alleged negligence of the Defendant
6 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Monroe County Children and
7 Youth Services be required to adopt a third-party training program which demonstrates
8 appropriate circumstances under which a child should be reasonably separated from its
9 natural parents, and the specific legal procedures to adhere to for such a separation to
10 take place, including when it is appropriate to terminate an investigation, as well as, not
11 rejecting and repudiating evidence that exculpates that accused and should lead to a
12 case being closed much sooner than is required by statute.

13 3076. Accordingly, and in connection with the alleged negligence of the Defendant
14 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
15 attend and pass a rigorous a third-party training program which demonstrates
16 appropriate circumstances under which a child should be reasonably separated from its
17 natural parents, and the specific legal procedures to adhere to for such a separation to
18 take place, including when it is appropriate to terminate an investigation, as well as, not
19 rejecting and repudiating evidence that exculpates that accused and should lead to a
20 case being closed much sooner than is required by statute.

21 3077. Accordingly, if a third-party cannot be found to render the appropriately rigorous
22 training course, then the Defendant Entities should create their own legal training
23 program which demonstrates appropriate circumstances under which a child should be

1 reasonably separated from its natural parents, and the specific legal procedures to
2 adhere to for such a separation to take place, including when it is appropriate to
3 terminate an investigation, as well as, not rejecting and repudiating evidence that
4 exculpates that accused and should lead to a case being closed much sooner than is
5 required by statute; and, before the created program is implemented, the program must
6 be approved by an appropriate court or federal agency for review; and, the program
7 must be implemented within 180 days of the valid judgment of this honorable Court.

8 3078. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
9 conduct, including but not limited to, emotional and psychological distress, pain and
10 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
11 appropriate compensatory damages to account for PTSD therapies and other related
12 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
13 request an amount of \$84,800 in compensatory damages per Defendant.

14 3079. Defendant Monroe County through its Office of Children and Youth Services, is
15 legally obligated to appropriately train its state actor employees to avoid this egregious
16 violation of Pennsylvania common laws, and since harm was actually caused to the
17 current Plaintiff Smith Family, and since harm is likely to continue to harm future fathers,
18 and because the acts of the Defendants and their agents, assigns, or employees
19 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff
20 respectfully requests the imposition of punitive damages on Defendants Monroe
21 County, Ms. Adelaide W. Grace, and Mr. Tim Shaw to deter such Defendants from
22 committing such conduct in the future which violates the Pennsylvania Common Law
23 Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per

Defendants Mr. Tim Shaw and Mr. Jorge Manteria; \$5,000,000 per Defendant Ms.

Adelaide W. Grace; and \$10,000,000 per Defendant Monroe County.

3080. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXXVI. Negligent Infliction of Emotional Distress XV

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Monroe County, Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, "Security Supervisor 'Unknown,'" "Head of Hospital Security 'Unknown', Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

1 3081. Under Pennsylvania tort law, determination of negligent infliction of emotional
2 distress liability depends on “whether the emotional injuries sustained by the plaintiff
3 were reasonably foreseeable to the defendant.”²⁷⁸

4 3082. Pennsylvania recognizes that a plaintiff has to among other options, in order to
5 sustain an NIED claim, have “a contemporaneous perception of tortuous injury to a
6 close relative”.²⁷⁹

7 3083. An NIED claim can be supported in cases when “the defendant assumes a duty
8 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
9 being.” Toney, 36 A.3d at 92.

10 3084. As well, “special relationships must encompass an implied duty to care for the
11 plaintiff's emotional well- being.” Toney, 36 A.3d at 95.

12 3085. In The Law of Torts, Professor Dobbs explained that caring for the emotional
13 well-being of the plaintiff is a “duty to take care for the feelings of,” e.g., the mother of a
14 stillborn child. (Citing The Law of Torts, § 29.15 (2000)).²⁸⁰

15 3086. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
16 “intensely emotionally charged” sort for a court to recognize a pertinent “special
17 relationship” giving rise not to negligently inflict emotional distress. Id at 20-21.

²⁷⁸*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²⁷⁹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁸⁰*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 3087. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
2 type that a reasonable person is not expected to bear. Toney, 36 A.3d at 95.

3 3088. The Plaintiff will have to demonstrate physical manifestations of emotional
4 distress.²⁸¹

5 3089. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
6 establish the traditional elements of a negligence claim. *Id.*

7 3090. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
8 or obligation recognized by the law, requiring the actor to conform to a certain standard
9 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
10 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
11 the interests of another.²⁸²

12 3091. Negligence (1): A private medical provider actor, as well as state actors
13 considering removing a newborn child from the custody of its parents have a duty to do
14 so only if actual and imminent harm will come to the child by allowing the child to be
15 cared for by its parents, and if no actual and imminent harm is present then all
16 Defendant parties had an affirmative duty to do their best to keep the family unit intact.

²⁸¹ *Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁸² *See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

3092. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Monroe County, Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" failed to conform to the aforementioned duty when instead of affirmatively acting to keep the Smith Family unit intact where no actual or imminent harm would come to their child due to their presence; the Defendants did the inverse and either allowed or advocated for the separation of Newborn baby J.A.S. from his parents.

3093. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Monroe County, , Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert

1 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”
2 of which Defendants actively and of their own volition, while others passively and of
3 their own volition, contacted Northampton County CYS, Monroe County CYS, and the
4 Bethlehem Police Department in a concerted effort to separate Newborn baby J.A.S.
5 from his parents Plaintiffs Mr. and Mrs. Smith, some not just rejecting but repudiating
6 the copious amount of evidence that Plaintiff Mrs. Smith had not ever consumed
7 methamphetamine, and that neither Plaintiffs Mr. nor Mrs. Smith were of a violent
8 character.

9 3094. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from
10 Newborn baby J.A.S. against their will and consent and were left without control over
11 the care of their son Newborn baby J.A.S., including the ability to breastfeed Newborn
12 baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent to
13 Newborn baby J.A.S.’s medical treatment.

14 3095. Ejecting parents from hospital property against their will and consent under threat
15 of arrest in order to separate them from their newborn baby who was in neonatal
16 intensive care, and by not providing any services to ensure that the family unit remained
17 intact was sure to cause emotional injuries to the Plaintiffs that were reasonably
18 foreseeable to the Defendants.

19 3096. Plaintiffs Mr. and Mrs. Smith perceived “a contemporaneous perception of
20 tortuous injury to a close relative” because they knew that if they were removed from the
21 hospital grounds that Newborn baby J.A.S. would undergo treatments and medical
22 services not consented to, as well, it was clear that Plaintiff Mrs. Smith would not be

1 able to breastfeed Newborn baby J.A.S., nor would skin-to-skin contact be possible
2 between Plaintiffs Mr. or Mrs. Smith and Newborn baby J.A.S.

3 3097. As medical providers the Defendants had a special relationship with the mother
4 and father of a child in neonatal intensive care to take care of the feelings of that mother
5 and father.

6 3098. Any situation in which parents are being separated from their newborn baby
7 against the parents' will and consent is of the "intensely emotionally charged" sort that
8 gives rise to a duty to not negligently inflict emotional distress.

9 3099. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Newborn
10 baby J.A.S. who is their child who was in neonatal intensive care at the time of his
11 removal from his parents against their will and consent, without cause shortly after birth
12 by the Defendants and their agents, employees, or assigns, which was an "intensely
13 emotionally charged" situation.

14 3100. Plaintiffs Mr. and Mrs. Smith being removed against their will and consent from
15 St. Luke's Hospital property without cause created the type of compensable harm that is
16 worthy of relief because the harm inflicted on Plaintiffs Mr. and Mrs. Smith was of the
17 type that a reasonable person is not expected to bear.

18 3101. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
19 Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and
20 Gynecology Associates, Monroe County, Ms. Adelaide Grace, Mr. Tim Shaw, Ms.
21 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
22 Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
23 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown,

1 MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler,
2 DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, "Security Supervisor
3 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert
4 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
5 Team's" conduct violated Plaintiffs' rights under Pennsylvania common law negligent
6 infliction of emotional distress.

7 3102. Plaintiff Mrs. Smith has suffered the following physical manifestations of
8 emotional distress to the Defendant's alleged negligence: nightmares, night sweats,
9 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
10 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
11 reliving the incident, muscle tightness and back spasms, and body tremors.

12 3103. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
13 distress due to the Defendant's alleged negligence: intense headaches, depression,
14 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
15 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
16 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
17 face.

18 3104. Accordingly, and in connection with the alleged negligence of the Defendant
19 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
20 a third-party training program which demonstrates appropriate circumstances under
21 which a child should be reasonably separated from its natural parents, and the specific
22 legal procedures to adhere to for such a separation to take place, including how to
23 effectively invoke the affirmative duty to keep a family with a newborn child together

1 unless an actual and/or imminent threat exists to justify separation, or as prescribed by
2 law.

3 3105. Accordingly, and in connection with the alleged negligence of the Defendant
4 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
5 attend and pass a rigorous a third-party training program which demonstrates
6 appropriate circumstances under which a child should be reasonably separated from its
7 natural parents, and the specific legal procedures to adhere to for such a separation to
8 take place, including how to effectively invoke the affirmative duty to keep a family with
9 a newborn child together unless an actual and/or imminent threat exists to justify
10 separation, or as prescribed by law.

11 3106. Accordingly, if a third-party cannot be found to render the appropriately rigorous
12 training course, then the Defendant Entities should create their own legal training
13 program which demonstrates appropriate circumstances under which a child should be
14 reasonably separated from its natural parents, and the specific legal procedures to
15 adhere to for such a separation to take place, including how to effectively invoke the
16 affirmative duty to keep a family with a newborn child together unless an actual and/or
17 imminent threat exists to justify separation, or as prescribed by law; and, before the
18 created program is implemented, the program must be approved by an appropriate
19 court or federal agency for review; and, the program must be implemented within 180
20 days of the valid judgment of this honorable Court.

21 3107. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
22 conduct, including but not limited to, emotional and psychological distress, pain and
23 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests

1 appropriate compensatory damages to account for PTSD therapies and other related
2 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
3 request an amount of \$84,800 in compensatory damages per Defendant.

4 3108. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
5 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates
6 Group, St. Luke's Obstetrics and Gynecology Associates, Monroe County, Ms. Adelaide
7 Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick
8 Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
9 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
10 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
11 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
12 Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
13 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
14 and the "Hospital Leadership Team", and therefore, its ability to afford the appropriate
15 training to avoid this egregious violation of the Pennsylvania Common Law, and, since
16 harm was actually caused to the current Plaintiff Smith Family, and since harm is likely
17 to continue to harm future postpartum families, and because the acts of the Defendants
18 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
19 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
20 punitive damages on Defendant St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
21 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
22 and Gynecology Associates, Monroe County, Ms. Adelaide Grace, Mr. Tim Shaw, Ms.
23 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.

1 Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
 2 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown,
 3 MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler,
 4 DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, “Security Supervisor
 5 ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert
 6 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”
 7 to deter such Defendant from committing to such conduct in the future which violates
 8 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
 9 of \$1,000,000 in punitive damages per Defendants Mr. Tim Shaw, Ms. Dianne R.
 10 Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
 11 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown,
 12 MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Patricia Bates,
 13 CRNP, and Ms. Kimberly A. Nardis, CRNP; \$5,000,000 per Defendants St. Luke’s
 14 Physicians Group, Bethlehem Neonatal Associates Group, St. Luke’s Obstetrics and
 15 Gynecology Associates, Ms. Adelaide Grace, Mr. Patrick Philpot, DO, Ms. Chaminie
 16 Wheeler, DO, “Security Supervisor ‘Unknown,’” “Head of Hospital Security ‘Unknown’”,
 17 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
 18 and the “Hospital Leadership Team”; and \$10,000,000 per Defendants St. Luke’s
 19 Hospital, Onsite Neonatal, OBHG PA, Monroe County, Ms. Teresa Marlino, MD, and
 20 Ms. Cynthia Shultz, MD.

21 3109. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
 22 suffered any actual injury despite the deprivation of their common law rights, the
 23 Plaintiffs respectfully request a nominal judgment of \$1.00.

1 **XXXVII. Negligent Infliction of Emotional Distress XVI**

2 Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
3 Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
4 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
5 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms.
6 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe,
7 MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello,
8 DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates,
9 CRNP, Ms. Kimberly A. Nardis, CRNP

10 3110. Under Pennsylvania tort law, determination of negligent infliction of emotional
11 distress liability depends on "whether the emotional injuries sustained by the plaintiff
12 were reasonably foreseeable to the defendant."²⁸³

13 3111. Pennsylvania recognizes that a plaintiff has to among other options, in order to
14 sustain an NIED claim, have "a contemporaneous perception of tortuous injury to a
15 close relative".²⁸⁴

16 3112. An NIED claim can be supported in cases when "the defendant assumes a duty
17 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
18 being." Toney, 36 A.3d at 92.

²⁸³*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²⁸⁴*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

1 3113. As well, "special relationships must encompass an implied duty to care for the
2 plaintiff's emotional well- being." Toney, 36 A.3d at 95.

3 3114. In The Law of Torts, Professor Dobbs explained that caring for the emotional
4 well-being of the plaintiff is a "duty to take care for the feelings of," e.g., the mother of a
5 stillborn child. (Citing The Law of Torts, § 29.15 (2000)).²⁸⁵

6 3115. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
7 "intensely emotionally charged" sort for a court to recognize a pertinent "special
8 relationship" giving rise not to negligently inflict emotional distress. *Id.* at 20-21.

9 3116. Plaintiff must demonstrate "compensable emotional harm" which is harm of a
10 type that a reasonable is not person expected to bear. Toney, 36 A.3d at 95.

11 3117. The Plaintiff will have to demonstrate physical manifestations of emotional
12 distress.²⁸⁶

13 3118. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
14 establish the traditional elements of a negligence claim. *Id.*

15 3119. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
16 or obligation recognized by the law, requiring the actor to conform to a certain standard
17 of conduct; (2) a failure to conform to the required standard; (3) a causal connection

²⁸⁵*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

²⁸⁶*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

1 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
 2 the interests of another.²⁸⁷

3 3120. Negligence (1): A private medical provider actor has a duty not to ignore the will
 4 and consent of that child's parents concerning medical applications and procedures for
 5 their child.

6 3121. Negligence (2): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
 7 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
 8 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
 9 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
 10 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
 11 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
 12 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.
 13 Kimberly A. Nardis, CRNP failed to conform to the aforementioned duty because when
 14 Plaintiffs Mr. and Mrs. Smith withdrew consent for the treatment of newborn baby
 15 J.A.S., the Defendants physically separated Plaintiffs Mr. and Mrs. Smith from Newborn
 16 baby J.A.S. by having the Bethlehem Township Police eject Plaintiffs Mr. and Mrs.
 17 Smith against their will and consent from Defendant St. Luke's Hospital's property
 18 without reasonable suspicion of drug abuse by Plaintiff Mrs. Smith or a court order to
 19 separate Newborn baby J.A.S. from his parents under threat of arrest for trespassing,

²⁸⁷ See *Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 and Defendants thereafter medically treated Newborn baby J.A.S. against the will and
2 without the consent of his parents, Plaintiffs Mr. and Mrs. Smith, who were denied any
3 opportunity for a second medical opinion.

4 3122. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
5 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
6 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
7 Patrick Philpot, DO, Ms. DianneR. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
8 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
9 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
10 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.
11 Kimberly A. Nardis, CRNP actively and of their own volition, continued to perform tests,
12 treatments, and procedures on Newborn baby J.A.S. against the consent and will of his
13 parents.

14 3123. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from
15 Newborn baby J.A.S. against their will and consent and were left without consent or
16 control over the care of their son Newborn baby J.A.S., including the ability to
17 breastfeed Newborn baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S.,
18 and consent to Newborn baby J.A.S.'s medical treatment.

19 3124. Ejecting parents from hospital property against their will and consent under threat
20 of arrest in order to separate them from their newborn baby who was in neonatal
21 intensive care, with conscious disregard for the will and against the consent of a
22 newborn child's parents was sure to cause emotional injuries to the Plaintiffs that were
23 reasonably foreseeable to the Defendants.

1 3125. Plaintiffs Mr. and Mrs. Smith perceived “a contemporaneous perception of
2 tortuous injury to a close relative” because they knew that if they were removed from the
3 hospital grounds that Newborn baby J.A.S. would undergo treatments and medical
4 services not consented to, as well, it was clear that Plaintiff Mrs. Smith would not be
5 able to breastfeed Newborn baby J.A.S., nor would skin-to-skin contact be possible
6 between Plaintiffs Mr. or Mrs. Smith and Newborn baby J.A.S.

7 3126. As medical providers the Defendants had a special relationship with the mother
8 and father of a child in neonatal intensive care to take care of the feelings of that mother
9 and father.

10 3127. Any situation in which parents have their will circumvented and consent or lack
11 thereof disregarded concerning their newborn baby is of the “intensely emotionally
12 charged” sort that gives rise to a duty to not negligently inflict emotional distress.

13 3128. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Newborn
14 baby J.A.S. who is their child, who was in neonatal intensive care at the time his
15 removal from his parents, were separated without cause from him against their will and
16 consent shortly after birth by Defendants and their agents, employees, or assigns,
17 which was an “intensely emotionally charged” situation.

18 3129. Plaintiffs Mr. and Mrs. Smith being removed from Defendant St. Luke’s Hospital
19 property without cause against their will and consent and their newborn baby having
20 continued to receive unnecessary medical treatment against the will and consent of the
21 parents created the type of compensable harm that is worthy of relief because the harm
22 inflicted on Plaintiffs Mr. and Mrs. Smith was of the type that a reasonable person is not
23 expected to bear.

3130. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. DianneR. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP's conduct violated Plaintiffs' rights under Pennsylvania common law negligent infliction of emotional distress.

3131. Plaintiff Mrs. Smith has suffered the following physical manifestations of emotional distress to the Defendant's alleged negligence: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby J.A.S., insomnia, depression, PTSD symptoms including staring into space while reliving the incident, muscle tightness and back spasms, and body tremors.

3132. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional distress due to the Defendant's alleged negligence: intense headaches, depression, stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin sometimes forming open sores on his scalp and face.

3133. Accordingly, and in connection with the alleged negligence of the Defendant parties, Plaintiffs Mr. and Mrs. Smith and request all Defendant Entities be required to adopt a third-party training program which demonstrates appropriate circumstances

1 under which a child should be reasonably separated from its natural parents, and the
2 specific legal procedures to adhere to for such a separation to take place, including
3 when it is appropriate to relinquish a child to its birth parents and to cease all medical
4 treatments as the parents see fit.

5 3134. Accordingly, and in connection with the alleged negligence of the Defendant
6 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
7 attend and pass a rigorous a third-party training program which demonstrates
8 appropriate circumstances under which a child should be reasonably separated from its
9 natural parents, and the specific legal procedures to adhere to for such a separation to
10 take place, including when it is appropriate to relinquish a child to its birth parents and to
11 cease all medical treatments as the parents see fit.

12 3135. Accordingly, if a third-party cannot be found to render the appropriately rigorous
13 training course, then the Defendant Entities should create their own legal training
14 program which demonstrates appropriate circumstances under which a child should be
15 reasonably separated from its natural parents, and the specific legal procedures to
16 adhere to for such a separation to take place, including when it is appropriate to
17 relinquish a child to its birth parents and to cease all medical treatments as the parents
18 see fit; and, before the created program is implemented, the program must be approved
19 by an appropriate court or federal agency for review; and, the program must be
20 implemented within 180 days of the valid judgment of this honorable Court.

21 3136. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
22 conduct, including but not limited to, emotional and psychological distress, pain and
23 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests

1 appropriate compensatory damages to account for PTSD therapies and other related
2 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
3 request an amount of \$84,800 in compensatory damages per Defendant.

4 3137. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
5 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates
6 Group, St. Luke's Obstetrics and Gynecology Associates, Monroe County, Ms. Adelaide
7 Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick
8 Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
9 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
10 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
11 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
12 Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
13 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
14 and the "Hospital Leadership Team", and therefore, its ability to afford the appropriate
15 training to avoid this egregious violation of the Pennsylvania Common Law, and, since
16 harm was actually caused to the current Plaintiff Smith Family, and since harm is likely
17 to continue to harm future postpartum families, and because the acts of the Defendants
18 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
19 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
20 punitive damages on Defendant St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
21 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
22 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
23 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn

1 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
 2 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
 3 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.
 4 Kimberly A. Nardis, CRNP to deter such Defendants from committing to such conduct in
 5 the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs
 6 respectfully request an amount of \$1,000,000 in punitive damages per Defendants Ms.
 7 Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr.
 8 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
 9 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms.
 10 Patricia Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP; \$5,000,000 per Defendants
 11 St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's
 12 Obstetrics and Gynecology Associates, Mr. Patrick Philpot, DO, and Ms. Chaminie
 13 Wheeler, DO; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal,
 14 OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.
 15 3138. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
 16 suffered any actual injury despite the deprivation of their common law rights, the
 17 Plaintiffs respectfully request a nominal judgment of \$1.00.

18 **XXXVIII. Negligent Infliction of Emotional Distress XVII**

19 Mr. & Mrs. Smith v. St. Luke's Hospital, OBHG PA, Onsite Neonatal & Ms. Teresa

20 Marlino, MD

1 3139. Under Pennsylvania tort law, determination of negligent infliction of emotional
2 distress liability depends on “whether the emotional injuries sustained by the plaintiff
3 were reasonably foreseeable to the defendant.”²⁸⁸

4 3140. Pennsylvania recognizes that a plaintiff has to among other options, in order to
5 sustain an NIED claim, have “a contemporaneous perception of tortuous injury to a
6 close relative”.²⁸⁹

7 3141. An NIED claim can be supported in cases when “the defendant assumes a duty
8 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
9 being.” Toney, 36 A.3d at 92.

10 3142. As well, “special relationships must encompass an implied duty to care for the
11 plaintiff's emotional well-being.” Toney, 36 A.3d at 95.

12 3143. In *The Law of Torts*, Professor Dobbs explained that caring for the emotional
13 well-being of the plaintiff is a “duty to take care for the feelings of,” e.g., the mother of a
14 stillborn child. (Citing *The Law of Torts*, § 29.15 (2000)).²⁹⁰

15 3144. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
16 “intensely emotionally charged” sort for a court to recognize a pertinent “special
17 relationship” giving rise not to negligently inflict emotional distress. *Id* at 20-21.

18 3145. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
19 type that a reasonable is not person expected to bear. Toney, 36 A.3d at 95.

²⁸⁸*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²⁸⁹*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁹⁰*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 3146. The Plaintiff will have to demonstrate physical manifestations of emotional
2 distress.²⁹¹

3 3147. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
4 establish the traditional elements of a negligence claim. *Id.*

5 3148. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
6 or obligation recognized by the law, requiring the actor to conform to a certain standard
7 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
8 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
9 the interests of another.²⁹²

10 3149. Negligence (1): A private medical provider actor accusing a mother of illegal
11 methamphetamine use has a duty to only do so with a court order or with reasonable
12 suspicion of drug abuse on the part of the mother, including signs and symptoms of
13 methamphetamine withdrawal in the newborn baby and the mother, and a drug test with
14 positive and distinguishable results for methamphetamine alone.

15 3150. Negligence (2): Defendants St. Luke's Hospital, OBHG PA, Onsite Neonatal, and
16 Ms. Teresa Marlino, MD unequivocally accused Plaintiff Mrs. Smith of ingesting illegal
17 methamphetamine in her effort to separate Newborn baby J.A.S. from his parents failed

²⁹¹ *Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁹² *See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 to conform to the aforementioned duty when, without a court order, any reasonable
2 suspicion of methamphetamine use by Plaintiff Mrs. Smith, nor a drug test with positive
3 and distinguishable results for methamphetamine alone.

4 3151. Negligence (3): Defendants St. Luke's Hospital, OBHG, Onsite Neonatal, and
5 Ms. Teresa Marlino, MD actively and of her own volition, accused Plaintiff Mrs. Smith of
6 methamphetamine ingestion, and implied that the deleterious effects of
7 methamphetamine ingestion by Plaintiff Mrs. Smith were passed on to Newborn baby
8 J.A.S. in an effort to separate Newborn baby J.A.S. from his parents Plaintiffs Mr. and
9 Mrs. Smith.

10 3152. Negligence (4): Plaintiffs Mr. and Mrs. Smith were in fact, separated from
11 Newborn baby J.A.S. against their will and consent and were left without control over
12 the care of their son Newborn baby J.A.S., including the ability to breastfeed Newborn
13 baby J.A.S., have skin-to-skin contact with Newborn baby J.A.S., and consent to
14 Newborn baby J.A.S.'s medical treatment.

15 3153. Accusing a mother of a newborn child of illegal methamphetamine use by falsely
16 stating to Plaintiffs Mr. and Mrs. Smith that Plaintiff Mrs. Smith tested positive for
17 methamphetamine was sure to cause emotional injuries to the Plaintiffs that were
18 reasonably foreseeable to the Defendants.

19 3154. Plaintiffs Mr. and Mrs. Smith perceived "a contemporaneous perception of
20 tortuous injury to a close relative" because they knew that if they were removed from the
21 hospital grounds that Newborn baby J.A.S. would undergo treatments and medical
22 services not consented to, as well, it was clear that Plaintiff Mrs. Smith would not be

1 able to breastfeed Newborn baby J.A.S., nor would skin-to-skin contact be possible
2 between Plaintiffs Mr. or Mrs. Smith and Newborn baby J.A.S.

3 3155. As medical providers the Defendants had a special relationship with the mother
4 and father of a child in neonatal intensive care to take care of the feelings of that mother
5 and father.

6 3156. Any situation in which a mother of a newborn child is accused of
7 methamphetamine ingestion by a medical provider--the deleterious effects of which
8 have supposedly been passed on to her newborn baby--is of the "intensely emotionally
9 charged" sort that gives rise to a duty to not negligently inflict emotional distress.

10 3157. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Newborn
11 baby J.A.S. who is their child, who was in neonatal intensive care at the time that
12 Plaintiff Mrs. Smith was accused by Defendant Ms. Teresa Marlino, MD of ingesting
13 illegal methamphetamine, passing that methamphetamine along to her newborn baby,
14 and supposedly buying methamphetamine "off the street" was an "intensely emotionally
15 charged" situation.

16 3158. Plaintiff Mrs. Smith being accused of methamphetamine ingestion and then being
17 removed from Defendant St. Luke's Hospital property against her will and consent
18 without cause is worthy of relief because the harm inflicted on Plaintiffs Mr. and Mrs.
19 Smith was of the type that a reasonable person is not expected to bear.

20 3159. Defendants St. Luke's Hospital, OBHG PA, Onsite Neonatal, and Ms. Teresa
21 Marlino, MD's conduct violated Plaintiffs' rights under Pennsylvania common law
22 negligent infliction of emotional distress.

1 3160. Plaintiff Mrs. Smith has suffered the following physical manifestations of
2 emotional distress to the Defendant's alleged negligence: nightmares, night sweats,
3 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
4 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
5 reliving the incident, muscle tightness and back spasms, and body tremors.

6 3161. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
7 distress due to the Defendant's alleged negligence: intense headaches, depression,
8 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
9 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
10 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
11 face.

12 3162. Accordingly, and in connection with the alleged negligence of the Defendant
13 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
14 a third-party training program which demonstrates appropriate circumstances under
15 which a child should be reasonably separated from its natural parents, and the specific
16 legal procedures to adhere to for such a separation to take place, including only
17 accusing a mother of illegal methamphetamine use with a court order or signs and
18 symptoms of methamphetamine withdrawal in both the mother and the newborn child.

19 3163. Accordingly, and in connection with the alleged negligence of the Defendant
20 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
21 attend and pass a rigorous a third-party training program which demonstrates
22 appropriate circumstances under which a child should be reasonably separated from its
23 natural parents, and the specific legal procedures to adhere to for such a separation to

1 take place, including only accusing a mother of illegal methamphetamine use with a
2 court order or signs and symptoms of methamphetamine withdrawal in both the mother
3 and the newborn child.

4 3164. Accordingly, if a third-party cannot be found to render the appropriately rigorous
5 training course, then the Defendant Entities should create their own legal training
6 program which demonstrates appropriate circumstances under which a child should be
7 reasonably separated from its natural parents, and the specific legal procedures to
8 adhere to for such a separation to take place, including only accusing a mother of illegal
9 methamphetamine use with a court order or signs and symptoms of methamphetamine
10 withdrawal in both the mother and the newborn child; and, before the created program
11 is implemented, the program must be approved by an appropriate court or federal
12 agency for review; and, the program must be implemented within 180 days of the valid
13 judgment of this honorable Court.

14 3165. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
15 conduct, including but not limited to, emotional and psychological distress, pain and
16 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
17 appropriate compensatory damages to account for PTSD therapies and other related
18 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
19 request an amount of \$84,800 in compensatory damages per Defendant.

20 3166. Given the substantial wealth of the Defendants St. Luke's Hospital, OBHG PA,
21 Onsite Neonatal, and Ms. Teresa Marlino, MD, and therefore, their ability to afford the
22 appropriate training to avoid this egregious violation of the Pennsylvania Common Law,
23 and, since harm was actually caused to the current Plaintiff Smith Family, and since

harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants St. Luke's Hospital, OBHG PA, Onsite Neonatal, and Ms. Teresa Marlino, MD to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's Hospital, OBHG PA, Onsite Neonatal, and Ms. Teresa Marlino, MD.

3167. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XXXIX. Negligent Infliction of Emotional Distress XVIII

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, & Ms. Kimberly A. Nardis, CRNP

1 3168. Under Pennsylvania tort law, determination of negligent infliction of emotional
2 distress liability depends on “whether the emotional injuries sustained by the plaintiff
3 were reasonably foreseeable to the defendant.”²⁹³

4 3169. Pennsylvania recognizes that a plaintiff has to among other options, in order to
5 sustain an NIED claim, have “a contemporaneous perception of tortuous injury to a
6 close relative”.²⁹⁴

7 3170. An NIED claim can be supported in cases when “the defendant assumes a duty
8 by contract, or otherwise when the duty encompasses the plaintiff's emotional well-
9 being.” Toney, 36 A.3d at 92.

10 3171. As well, “special relationships must encompass an implied duty to care for the
11 plaintiff's emotional well- being.” Toney, 36 A.3d at 95.

12 3172. In The Law of Torts, Professor Dobbs explained that caring for the emotional
13 well-being of the plaintiff is a “duty to take care for the feelings of,” e.g., the mother of a
14 stillborn child. (Citing The Law of Torts, § 29.15 (2000)).²⁹⁵

15 3173. The relationship between the Defendants and Plaintiff Mrs. Smith must be of a
16 “intensely emotionally charged” sort for a court to recognize a pertinent “special
17 relationship” giving rise not to negligently inflict emotional distress. Id at 20-21.

²⁹³*Sinn v. Burd*, 486 Pa. 146, 404 A.2d 672, 684 (1979).

²⁹⁴*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁹⁵*MDB v. Punxsutawney Christian Sch.*, 386 F. Supp. 3d 565 at 20 (W.D. Pa. 2019).

1 3174. Plaintiff must demonstrate “compensable emotional harm” which is harm of a
2 type that a reasonable person is not expected to bear. Toney, 36 A.3d at 95.

3 3175. The Plaintiff will have to demonstrate physical manifestations of emotional
4 distress.²⁹⁶

5 3176. In addition to proving elements of a valid NIED claim, the Plaintiff will first have to
6 establish the traditional elements of a negligence claim. *Id.*

7 3177. Under Pennsylvania law, a negligence claim consists of four elements: (1) a duty
8 or obligation recognized by the law, requiring the actor to conform to a certain standard
9 of conduct; (2) a failure to conform to the required standard; (3) a causal connection
10 between the conduct and the resulting injury; and (4) actual loss or damage resulting to
11 the interests of another.²⁹⁷

12 3178. Negligence (1): A private medical provider actor treating a newborn baby has a
13 duty not to give that child antibiotics that they do not require, especially if those
14 antibiotics could lead to life threatening conditions in the newborn.

15 3179. Negligence (2): Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, St.
16 Luke’s Physicians Group, Bethlehem Neonatal Associates Group, St. Luke’s Obstetrics
17 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.

²⁹⁶*Thompson v. United States*, CIVIL ACTION NO.: 16-3287 at 3 (E.D. Pa. July 12, 2017).

²⁹⁷*See Rabutino v. Freedom State Realty Co., Inc.*, 2002 Pa. Super. 318, 809 A.2d 933, 938 (Pa. Super. 2002); *Kleinknecht v. Gettysburg College*, 989 F.2d 1360, 1366 (3d Cir. 1993).

1 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
2 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
3 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
4 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.
5 Kimberly A. Nardis, CRNP failed to conform to the aforementioned duty when the
6 Defendants administered antibiotics against the consent and will of Plaintiffs Mr. and
7 Mrs. Smith, and in doing so caused Plaintiff Newborn baby J.A.S. to suffer the life-
8 threatening condition of pyloric stenosis.

9 3180. Negligence (3): Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
10 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
11 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.

12 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
13 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
14 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
15 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.
16 Kimberly A. Nardis, CRNP actively and of their own volition, gave without valid cause a
17 copious amount of antibiotics to Newborn baby J.A.S. in his first few days of life, which
18 later caused the life-threatening condition of pyloric stenosis wherein Newborn baby
19 J.A.S. could not process any food or liquid from his stomach to his intestines, causing
20 Newborn baby J.A.S. to vomit copiously, lose weight, and steadily dehydrate.

21 3181. Negligence (4): Newborn baby J.A.S. did in fact suffer severe dehydration
22 stemming from his inability to maintain fluids, leading to his eventual hospitalization and
23 surgery at Lehigh Valley Medical Center to correct the pyloric stenosis.

1 3182. With conscious disregard for the will and against the consent of the newborn
2 child's parents, Defendants administered such copious amounts of antibiotics to
3 Newborn baby J.A.S. that such injections led to the life-threatening condition of pyloric
4 stenosis was sure to cause emotional injuries to the Plaintiffs that were reasonably
5 foreseeable to the Defendants.

6 3183. Plaintiffs Mr. and Mrs. Smith perceived "a contemporaneous perception of
7 tortuous injury to a close relative" because they slowly watched their child dying of
8 dehydration over the course of several weeks leading to his near death from
9 dehydration.

10 3184. As medical providers the Defendants had a special relationship with the mother
11 and father of a child in neonatal intensive care to take care of the feelings of that mother
12 and father.

13 3185. Any situation in which parents have to watch their newborn baby slowly die is of
14 the "intensely emotionally charged" sort that gives rise to a duty to not negligently inflict
15 emotional distress.

16 3186. In the instant case, Plaintiffs Mr. and Mrs. Smith are closely related to Newborn
17 baby J.A.S. who is their child, who was in neonatal intensive care at the time that the
18 copious and unnecessary antibiotics were injected into Newborn baby J.A.S., which was
19 from start to finish an "intensely emotionally charged" situation.

20 3187. Plaintiffs Mr. and Mrs. Smith being forcefully removed from Defendant St. Luke's
21 Hospital property without cause, and their newborn baby child having continued to
22 receive unnecessary medical treatment against the will and consent of the parents,
23 created the type of compensable harm that is worthy of relief because the harm inflicted

1 on Plaintiffs Mr. and Mrs. Smith was of the type that a reasonable person is not
2 expected to bear.

3 3188. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
4 Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and
5 Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick
6 Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
7 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
8 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
9 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.
10 Kimberly A. Nardis, CRNP's conduct violated Plaintiffs' rights under Pennsylvania
11 common law negligent infliction of emotional distress.

12 3189. Plaintiff Mrs. Smith has suffered the following physical manifestations of
13 emotional distress to the Defendant's alleged negligence: nightmares, night sweats,
14 excessive diarrhea, anxiety and panic attacks, separation anxiety from newborn baby
15 J.A.S., insomnia, depression, PTSD symptoms including staring into space while
16 reliving the incident, muscle tightness and back spasms, and body tremors.

17 3190. Plaintiff Mr. Smith has suffered the following physical manifestations of emotional
18 distress due to the Defendant's alleged negligence: intense headaches, depression,
19 stomach upset and nausea, excessive acid reflux, vomiting, symptoms of PTSD
20 including staring into space reliving the incident, fatigue, insomnia, excessive sweating,
21 loss of appetite, excessive dry skin sometimes forming open sores on his scalp and
22 face.

1 3191. Accordingly, and in connection with the alleged negligence of the Defendant
2 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Entities be required to adopt
3 a third-party training program which demonstrates appropriate circumstances under
4 which a child should be reasonably separated from its natural parents, and the specific
5 legal procedures to adhere to for such a separation to take place, and that under no
6 circumstances should any child receive any medication, antibiotic, or treatment of any
7 sort whatsoever, unless absolutely necessary to maintain that child from actually falling
8 into a life-threatening condition, and not to maintain a narrative based on some
9 hypothetical possibility that is in reality highly improbable.

10 3192. Accordingly, and in connection with the alleged negligence of the Defendant
11 parties, Plaintiffs Mr. and Mrs. Smith request all Defendant Persons be required to
12 attend and pass a rigorous a third-party training program which demonstrates
13 appropriate circumstances under which a child should be reasonably separated from its
14 natural parents, and the specific legal procedures to adhere to for such a separation to
15 take place, and that under no circumstances should any child receive any medication,
16 antibiotic, or treatment of any sort whatsoever, unless absolutely necessary to maintain
17 that child from actually falling into a life-threatening condition, and not to maintain a
18 narrative based on some hypothetical possibility that is in reality highly improbable.

19 3193. Accordingly, if a third-party cannot be found to render the appropriately rigorous
20 training course, then the Defendant Entities should create their own legal training
21 program which demonstrates appropriate circumstances under which a child should be
22 reasonably separated from its natural parents, and the specific legal procedures to
23 adhere to for such a separation to take place, and that under no circumstances should

1 any child receive any medication, antibiotic, or treatment of any sort whatsoever, unless
2 absolutely necessary to maintain that child from actually falling into a life-threatening
3 condition, and not to maintain a narrative based on some hypothetical possibility that is
4 in reality highly improbable; and, before the created program is implemented, the
5 program must be approved by an appropriate court or federal agency for review; and,
6 the program must be implemented within 180 days of the valid judgment of this
7 honorable Court.

8 3194. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
9 conduct, including but not limited to, emotional and psychological distress, pain and
10 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
11 appropriate compensatory damages to account for PTSD therapies and other related
12 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
13 request an amount of \$84,800 in compensatory damages per Defendant.

14 3195. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
15 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates
16 Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms.
17 Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N.
18 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
19 Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A.
20 Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia
21 Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP, and therefore, their ability to afford
22 the appropriate training to avoid this egregious violation of the Pennsylvania Common
23 Law, and, since harm was actually caused to the current Plaintiff Smith Family, and

1 since harm is likely to continue to harm future postpartum families, and because the
2 acts of the Defendants and their agents, assigns, or employees callously disregarded
3 the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request
4 the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal,
5 OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St.
6 Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia
7 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD,
8 Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD,
9 Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr.
10 Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, and Ms.
11 Kimberly A. Nardis, CRNP to deter such Defendants from committing to such conduct in
12 the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs
13 respectfully request an amount of \$3,000,000 in punitive damages per Defendants Ms.
14 Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr.
15 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
16 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms.
17 Patricia Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP; \$15,000,000 per Defendants
18 St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's
19 Obstetrics and Gynecology Associates, Mr. Patrick Philpot, DO, and Ms. Chaminie
20 Wheeler, DO; and \$30,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal,
21 OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

3196. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XL. Intentional Infliction of Emotional Distress I

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team", & Mr. Jerry Hric, MD

3197. To plead an intentional infliction of emotional distress claim under Pennsylvania law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2) was extreme and outrageous; (3) actually caused the distress; and (4) caused distress that was severe.²⁹⁸

3198. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'"²⁹⁹

²⁹⁸*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

²⁹⁹*Id.*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

1 3199. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
 2 must allege that [they] suffered "severe" emotional distress resulting from the
 3 Defendant's conduct.³⁰⁰

4 3200. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
 5 disappointment, worry and nausea" all indicate "severe" emotional distress[.]"³⁰¹ as well
 6 as, "fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
 7 [and] mental anguish also indicate "severe emotional distress."³⁰²

8 3201. "The extreme and outrageous character of conduct may arise from an abuse by a
 9 person in a position of actual or apparent authority over another, or by one with the
 10 power to affect the other's interests." ³⁰³

11 3202. IIED (1): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
 12 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
 13 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's"
 14 actions were intentional and/or reckless when as agents, employees, or assigns of a
 15 medical provider Defendants separated a newborn child in a NICU from the custody,

³⁰⁰*Id* at *10-11, citing, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); See also, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁰¹*Id*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³⁰²*Id*.

³⁰³ *Id* at *8.

1 care, and control of its parents Plaintiffs Mr. and Mrs. Smith without a court order or
2 reasonable suspicion of drug abuse of the part of the mother Plaintiff Mrs. Smith.

3 3203. IIED (2): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
4 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
5 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's"
6 actions were extreme and outrageous because to separate a mother and father from a
7 newborn child in a NICU without a court order or reasonable suspicion of abusive
8 conduct was so outrageous in character, and so extreme in degree, as to go beyond all
9 possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in
10 a civilized community.

11 3204. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
12 when Plaintiffs Mr. and Mrs. Smith were removed from Defendant St. Luke's Hospital
13 property against their will and consent under threat of arrest, and when Defendants St.
14 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia
15 Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
16 Dawn Hoffman, and the "Hospital Leadership Team" made it clear that Plaintiffs Mr. and
17 Mrs. Smith would not even be allowed to say goodbye to their newborn baby before
18 being ejected unjustifiably and against their will and consent, causing the Plaintiffs Mr.
19 and Mrs. Smith to feel grief, fear, anxiety, stress, chagrin, disappointment, worry,
20 shame, humiliation, depression, and embarrassment.

21 3205. IIED (4): The stress to the Plaintiffs caused by Defendants was and continues to
22 be extremely severe, in that the distress has manifested itself in physical symptoms that
23 include, but are not limited to: Plaintiff Mrs. Smith has suffered the following physical

1 manifestations of emotional distress to the Defendant's alleged intentional infliction of
2 emotional distress: nightmares, night sweats, excessive diarrhea, anxiety and panic
3 attacks, separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD
4 symptoms including staring into space while reliving the incident, muscle tightness and
5 back spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
6 manifestations of emotional distress due to the Defendant's alleged intentional infliction
7 of emotional distress: intense headaches, depression, stomach upset and nausea,
8 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
9 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
10 sometimes forming open sores on his scalp and face.

11 3206. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
12 specialized PTSD therapist to process and heal from the emotional distress foisted
13 upon them.

14 3207. Upon information and belief, each of the listed Defendants in this claim, St.
15 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia
16 Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
17 Dawn Hoffman, and the "Hospital Leadership Team," were in a position of actual or
18 apparent authority over the Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S., and
19 each Defendant had the power to affect the interest of the Smith Family to remain intact.

20 3208. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
21 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
22 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's" conduct violated

1 Plaintiffs' rights under Pennsylvania common law intentional infliction of emotional
2 distress.

3 3209. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
4 evidence that each of the listed Defendants conspired with at least one other Defendant
5 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
6 Plaintiffs.

7 3210. The conspiracy between the Defendant parties and their agents, employees,
8 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
9 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

10 3211. Upon information and belief, Plaintiff can demonstrate by a preponderance of
11 evidence that the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, and Mr.
12 Jerry Hric, MD supervised Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve
13 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
14 "Hospital Leadership Team," in connection with this allegation and are therefore liable
15 under a legal theory of respondeat superior.

16 3212. Accordingly, and in connection with the alleged intentional infliction of emotional
17 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
18 Entities be required to adopt a third-party training program which demonstrates
19 appropriate circumstances under which a child should be reasonably separated from its
20 natural parents, and the specific legal procedures to adhere to for such a separation to
21 take place.

22 3213. Accordingly, and in connection with the alleged intentional infliction of emotional
23 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant

1 Persons be required to attend and pass a rigorous a third-party training program which
2 demonstrates appropriate circumstances under which a child should be reasonably
3 separated from its natural parents, and the specific legal procedures to adhere to for
4 such a separation to take place.

5 3214. Accordingly, if a third-party cannot be found to render the appropriately rigorous
6 training course, then the Defendant Entities should create their own legal training
7 program which demonstrates appropriate circumstances under which a child should be
8 reasonably separated from its natural parents, and the specific legal procedures to
9 adhere to for such a separation to take place; and, before the created program is
10 implemented, the program must be approved by an appropriate court or federal agency
11 for review; and, the program must be implemented within 180 days of the valid
12 judgment of this honorable Court.

13 3215. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
14 conduct, including but not limited to, emotional and psychological distress, pain and
15 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
16 appropriate compensatory damages to account for PTSD therapies and other related
17 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
18 request an amount of \$84,800 in compensatory damages per Defendant.

19 3216. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
20 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve
21 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
22 "Hospital Leadership Team", and therefore, their ability to afford the appropriate training
23 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm

1 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
 2 continue to harm future postpartum families, and because the acts of the Defendants
 3 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
 4 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
 5 punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
 6 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
 7 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" to
 8 deter such Defendants from committing to such conduct in the future which violates
 9 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
 10 of \$5,000,000 in punitive damages per Defendants Mr. Jerry Hric, MD Mr. Steve
 11 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the
 12 "Hospital Leadership Team"; and \$10,000,000 per Defendants St. Luke's Hospital,
 13 Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.
 14 3217. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
 15 suffered any actual injury despite the deprivation of their common law rights, the
 16 Plaintiffs respectfully request a nominal judgment of \$1.00.

17 **XLI. Intentional Infliction of Emotional Distress II**

18 Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa
 19 Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
 20 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team", & Mr.
 21 Jerry Hric, MD

1 3218. To plead an intentional infliction of emotional distress claim under Pennsylvania
2 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
3 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
4 that was severe.³⁰⁴

5 3219. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
6 has been found only where the conduct has been so outrageous in character, and so
7 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
8 as atrocious, and utterly intolerable in a civilized community.'"³⁰⁵

9 3220. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
10 must allege that [they] suffered "severe" emotional distress resulting from the
11 Defendant's conduct.³⁰⁶

12 3221. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
13 disappointment, worry and nausea" all indicate "severe" emotional distress[,] "³⁰⁷ as well

³⁰⁴*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³⁰⁵*Id*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³⁰⁶*Id* at *10-11, *citing*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also*, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁰⁷*Id*, *quoting*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

1 as, “fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
2 [and] mental anguish also indicate “severe emotional distress.”³⁰⁸

3 3222. “The extreme and outrageous character of conduct may arise from an abuse by a
4 person in a position of actual or apparent authority over another, or by one with the
5 power to affect the other's interests.” ³⁰⁹

6 3223. IIED (1): The Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms.
7 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
8 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the “Hospital Leadership Team” and
9 Mr. Jerry Hric, MD’s actions were intentional and/or reckless when as agents,
10 employees, or assigns of a medical provider, Defendants separated a newborn child in
11 a NICU from the custody, care and control of its parents Plaintiffs Mr. and Mrs. Smith
12 based entirely on an undifferentiated urinary drug screen, and repudiation of all
13 exculpatory evidence, including the fact that there were not any signs or symptoms of
14 methamphetamine withdrawal in either Plaintiff Mrs. Smith or Newborn baby J.A.S.

15 3224. IIED (2): The Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms.
16 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
17 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the “Hospital Leadership Team” and
18 Mr. Jerry Hric, MD’s actions were extreme and outrageous because to separate a
19 mother and father from a newborn child in a NICU without a court order or reasonable
20 suspicion, and based solely on an undifferentiated urinary drug screen and repudiation

³⁰⁸ *Id.*

³⁰⁹ *Id* at *8.

1 of the fact that neither Plaintiff Mrs. Smith nor Newborn baby J.A.S. was experiencing
2 methamphetamine withdrawal was so outrageous in character, and so extreme in
3 degree, as to go beyond all possible bounds of decency, and to be regarded as
4 atrocious, and utterly intolerable in a civilized community.

5 3225. IIED (3): The Defendants actions actually caused the distress to the Plaintiffs
6 when Plaintiffs Mr. and Mrs. Smith were removed against their will and consent from
7 Defendants St. Luke's Hospital property under threat of arrest, because Defendants St.
8 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia
9 Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
10 Dawn Hoffman, the "Hospital Leadership Team" and Mr. Jerry Hric, MD refused to
11 acknowledge Plaintiffs Mr. and Mrs. Smith's parental rights to remain with their child,
12 causing the Plaintiffs Mr. and Mrs. Smith to feel grief, fear, anxiety, stress, chagrin,
13 disappointment, worry, shame, humiliation, and, embarrassment.

14 3226. IIED (4): The stress to the Plaintiffs caused by Defendants was and continues to
15 be severe, in that the distress has manifested itself physical symptoms that include, but
16 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
17 of emotional distress to the Defendant's alleged intentional infliction of emotional
18 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
19 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms
20 including staring into space while reliving the incident, muscle tightness and back
21 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
22 manifestations of emotional distress due to the Defendant's alleged intentional infliction
23 of emotional distress: intense headaches, depression, stomach upset and nausea,

1 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
2 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
3 sometimes forming open sores on his scalp and face.

4 3227. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
5 specialized PTSD therapist to process and heal from the emotional distress foisted
6 upon them.

7 3228. Upon information and belief, each of the listed Defendants in this claim, St.
8 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia
9 Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
10 Dawn Hoffman, the "Hospital Leadership Team" and Mr. Jerry Hric, MD, were in a
11 position of actual or apparent authority over the Plaintiffs Mr. and Mrs. Smith and
12 Newborn baby J.A.S., and each Defendant had the power to affect the interest of the
13 Smith Family to remain intact.

14 3229. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
15 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
16 Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team" and Mr. Jerry Hric,
17 MD's conduct violated Plaintiffs' rights under Pennsylvania common law intentional
18 infliction of emotional distress.

19 3230. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
20 evidence that each of the listed Defendants conspired with at least one other Defendant
21 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
22 Plaintiffs.

1 3231. The conspiracy between the Defendant parties and their agents, employees,
2 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
3 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

4 3232. Upon information and belief, Plaintiff can demonstrate by a preponderance of
5 evidence that the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, and Mr.
6 Jerry Hric, MD supervised Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve
7 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
8 "Hospital Leadership Team," in connection with this allegation and are therefore liable
9 under a legal theory of respondeat superior.

10 3233. Accordingly, and in connection with the alleged intentional infliction of emotional
11 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
12 Entities be required to adopt a third-party training program which demonstrates
13 appropriate circumstances under which a child should be reasonably separated from its
14 natural parents, and the specific legal procedures to adhere to for such a separation to
15 take place, including what the signs and symptoms of methamphetamine withdrawal
16 are, when and how to appropriately attest to those symptoms in patient records, and to
17 only separate a newborn child from its parents if signs and symptoms of
18 methamphetamine withdrawal are present.

19 3234. Accordingly, and in connection with the alleged intentional infliction of emotional
20 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
21 Persons be required to attend and pass a rigorous a third-party training program which
22 demonstrates appropriate circumstances under which a child should be reasonably
23 separated from its natural parents, and the specific legal procedures to adhere to for

1 such a separation to take place, including what the signs and symptoms of
2 methamphetamine withdrawal are, when and how to appropriately attest to those
3 symptoms in patient records, and to only separate a newborn child from its parents if
4 signs and symptoms of methamphetamine withdrawal are present.

5 3235. Accordingly, if a third-party cannot be found to render the appropriately rigorous
6 training course, then the Defendant Entities should create their own legal training
7 program which demonstrates appropriate circumstances under which a child should be
8 reasonably separated from its natural parents, and the specific legal procedures to
9 adhere to for such a separation to take place, including what the signs and symptoms of
10 methamphetamine withdrawal are, when and how to appropriately attest to those
11 symptoms in patient records, and to only separate a newborn child from its parents if
12 signs and symptoms of methamphetamine withdrawal are present; and, before the
13 created program is implemented, the program must be approved by an appropriate
14 court or federal agency for review; and, the program must be implemented within 180
15 days of the valid judgment of this honorable Court.

16 3236. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
17 conduct, including but not limited to, emotional and psychological distress, pain and
18 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
19 appropriate compensatory damages to account for PTSD therapies and other related
20 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
21 request an amount of \$84,800 in compensatory damages per Defendant.

22 3237. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
23 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve

1 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
2 “Hospital Leadership Team”, and therefore, their ability to afford the appropriate training
3 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm
4 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
5 continue to harm future postpartum families, and because the acts of the Defendants
6 and their agents, assigns, or employees callously disregarded the Plaintiff’s rights in a
7 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
8 punitive damages on Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms.
9 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
10 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team” to
11 deter such Defendants from committing to such conduct in the future which violates
12 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
13 of \$5,000,000 in punitive damages per Defendants Mr. Jerry Hric, MD Mr. Steve
14 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the
15 “Hospital Leadership Team”; and \$10,000,000 per Defendants St. Luke’s Hospital,
16 Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.
17 3238. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
18 suffered any actual injury despite the deprivation of their common law rights, the
19 Plaintiffs respectfully request a nominal judgment of \$1.00.

20 **XLII. Intentional Infliction of Emotional Distress III**

21 Smith, et al. v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
22 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.

1 Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team", & Mr. Jerry Hric,

2 MD

3 3239. To plead an intentional infliction of emotional distress claim under Pennsylvania
4 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
5 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
6 that was severe.³¹⁰

7 3240. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
8 has been found only where the conduct has been so outrageous in character, and so
9 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
10 as atrocious, and utterly intolerable in a civilized community.'"³¹¹

11 3241. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
12 must allege that [they] suffered "severe" emotional distress resulting from the
13 Defendant's conduct.³¹²

³¹⁰*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³¹¹*Id.*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³¹²*Id.* at *10-11, *citing*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also*, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

1 3242. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
 2 disappointment, worry and nausea" all indicate "severe" emotional distress[,]"³¹³ as well
 3 as, "fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
 4 [and] mental anguish also indicate "severe emotional distress."³¹⁴

5 3243. "The extreme and outrageous character of conduct may arise from an abuse by a
 6 person in a position of actual or apparent authority over another, or by one with the
 7 power to affect the other's interests." ³¹⁵

8 3244. IIED (1): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
 9 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
 10 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's"
 11 actions were intentional and/or reckless when as agents, employees, or assigns of a
 12 medical provider, separated a newborn child in a NICU from the custody of its parents
 13 Plaintiffs Mr. and Mrs. Smith by falsifying medical information to state authorities by
 14 erroneously stating that Plaintiff Mrs. Smith ingested methamphetamine and that she
 15 passed the deleterious effects of methamphetamine ingestion on to her child Plaintiff
 16 Newborn baby J.A.S.

17 3245. IIED (2): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
 18 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L.
 19 Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's"

³¹³*Id.*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³¹⁴*Id.*

³¹⁵ *Id.* at *8.

1 actions were extreme and outrageous because to separate a mother and father from a
2 newborn child in a NICU by conveying false medical records to state authorities with an
3 intent to have Plaintiffs Mr. and Mrs. Smith separated from Plaintiff Newborn baby
4 J.A.S. was so outrageous in character, and so extreme in degree, as to go beyond all
5 possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in
6 a civilized community.

7 3246. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
8 when Plaintiffs Mr. and Mrs. Smith were removed from Defendant's St. Luke's Hospital
9 property against their will and consent under threat of arrest, because Defendants St.
10 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia
11 Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
12 Dawn Hoffman, and the "Hospital Leadership Team," contacted local police and two
13 different counties of children and youth services and conveyed the false information that
14 Plaintiff Mrs. Smith ingested methamphetamine and that she and Plaintiff Mr. Smith
15 should be separated from Plaintiff Newborn baby J.A.S., causing the Plaintiffs Mr. and
16 Mrs. Smith to feel grief, fear, anxiety, stress, chagrin, disappointment, worry, shame,
17 humiliation, and, embarrassment.

18 3247. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
19 be severe, in that the distress has manifested itself physical symptoms that include, but
20 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
21 of emotional distress to the Defendant's alleged intentional infliction of emotional
22 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
23 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms

1 including staring into space while reliving the incident, muscle tightness and back
2 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
3 manifestations of emotional distress due to the Defendant's alleged intentional infliction
4 of emotional distress: intense headaches, depression, stomach upset and nausea,
5 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
6 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
7 sometimes forming open sores on his scalp and face.

8 3248. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
9 specialized PTSD therapist to process and heal from the emotional distress foisted
10 upon them.

11 3249. Upon information and belief, each of the listed Defendants in this claim, St.
12 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia
13 Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
14 Dawn Hoffman, the "Hospital Leadership Team" and Mr. Jerry Hric, MD, were in a
15 position of actual or apparent authority over the Plaintiffs Mr. and Mrs. Smith and
16 Newborn baby J.A.S., and each Defendant had the power to affect the interest of the
17 Smith Family to remain intact.

18 3250. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
19 MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
20 Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team" and Mr. Jerry Hric,
21 MD's conduct violated Plaintiffs' rights under Pennsylvania common law intentional
22 infliction of emotional distress.

1 3251. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that each of the listed Defendants conspired with at least one other Defendant
3 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
4 Plaintiffs.

5 3252. The conspiracy between the Defendant parties and their agents, employees,
6 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
7 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

8 3253. Upon information and belief, Plaintiff can demonstrate by a preponderance of
9 evidence that the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, and Mr.
10 Jerry Hric, MD supervised Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve
11 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
12 "Hospital Leadership Team," in connection with this allegation and are therefore liable
13 under a legal theory of respondeat superior.

14 3254. Accordingly, and in connection with the alleged intentional infliction of emotional
15 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
16 Entities be required to adopt a third-party training program which demonstrates
17 appropriate circumstances under which a child should be reasonably separated from its
18 natural parents, and the specific legal procedures to adhere to for such a separation to
19 take place, including the accurate recording of medical records bereft of bias, the
20 prevention of rumors about patients, and the consequences of communication of false
21 medical records to state authorities.

22 3255. Accordingly, and in connection with the alleged intentional infliction of emotional
23 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant

1 Persons be required to attend and pass a rigorous a third-party training program which
2 demonstrates appropriate circumstances under which a child should be reasonably
3 separated from its natural parents, and the specific legal procedures to adhere to for
4 such a separation to take place, including the accurate recording of medical records
5 bereft of bias, the prevention of rumors about patients, and the consequences of
6 communication of false medical records to state authorities.

7 3256. Accordingly, if a third-party cannot be found to render the appropriately rigorous
8 training course, then the Defendant Entities should create their own legal training
9 program which demonstrates appropriate circumstances under which a child should be
10 reasonably separated from its natural parents, and the specific legal procedures to
11 adhere to for such a separation to take place, including the accurate recording of
12 medical records bereft of bias, the prevention of rumors about patients, and the
13 consequences of communication of false medical records to state authorities; and,
14 before the created program is implemented, the program must be approved by an
15 appropriate court or federal agency for review; and, the program must be implemented
16 within 180 days of the valid judgment of this honorable Court.

17 3257. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
18 conduct, including but not limited to, emotional and psychological distress, pain and
19 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
20 appropriate compensatory damages to account for PTSD therapies and other related
21 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
22 request an amount of \$84,800 in compensatory damages per Defendant.

3258. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team," and Mr. Jerry Hric, MD and therefore, their ability to afford the appropriate training to avoid this egregious violation of the Pennsylvania Common Law, and, since harm was actually caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team," and Mr. Jerry Hric, MD to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$5,000,000 in punitive damages per Defendants Mr. Jerry Hric, MD Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team"; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

3259. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XLIII. Intentional Infliction of Emotional Distress IV

1 Mr. & Mrs. Smith v. Anderson Labs & Ms. Emily Miller, MD

2 3260. To plead an intentional infliction of emotional distress claim under Pennsylvania
3 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
4 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
5 that was severe.³¹⁶

6 3261. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
7 has been found only where the conduct has been so outrageous in character, and so
8 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
9 as atrocious, and utterly intolerable in a civilized community.'"³¹⁷

10 3262. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
11 must allege that [they] suffered "severe" emotional distress resulting from the
12 Defendant's conduct.³¹⁸

³¹⁶*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³¹⁷*Id.*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³¹⁸*Id.* at *10-11, *citing*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also*, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

1 3263. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
2 disappointment, worry and nausea" all indicate "severe" emotional distress[,]”³¹⁹ as well
3 as, “fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
4 [and] mental anguish also indicate “severe emotional distress.”³²⁰

5 3264. "The extreme and outrageous character of conduct may arise from an abuse by a
6 person in a position of actual or apparent authority over another, or by one with the
7 power to affect the other's interests." ³²¹

8 3265. IIED (1): The Defendants Anderson Labs and Ms. Emily Miller, MD’s actions
9 were intentional and/or reckless when as agents, employees, or assigns of a medical
10 testing provider, separated a newborn child in a NICU from the custody, care and
11 control of its parents Plaintiffs Mr. and Mrs. Smith by administering a test that did not
12 differentiate between legal amphetamines and illegal methamphetamines, and which
13 Defendants knew or reasonably should have known would be used by St. Luke’s
14 Hospital, its affiliates, employees, agents, and/or assigns to accuse Plaintiff Mrs. Smith
15 of illegal methamphetamine ingestion, and by extension to separate Plaintiff Mrs. Smith
16 from her newborn baby.

17 3266. IIED (2): The Defendants Anderson Labs and Ms. Emily Miller, MD, & actions
18 were extreme and outrageous because to separate a mother and father from a newborn
19 child in a NICU by providing undifferentiated drug tests which the Defendants knew or
20 reasonably should have known would be communicated to state authorities as testing

³¹⁹*Id*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³²⁰*Id*.

³²¹ *Id* at *8.

1 positive for methamphetamine without actually testing positive for methamphetamine,
2 was so outrageous in character, and so extreme in degree, as to go beyond all possible
3 bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized
4 community.

5 3267. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
6 when Plaintiffs Mr. and Mrs. Smith were removed from St. Luke's Hospital property
7 against their will and consent under threat of arrest, because Defendants Anderson
8 Labs and Ms. Emily Miller, MD, produced undifferentiated drug tests which were meant
9 to convey the false information that Plaintiff Mrs. Smith ingested methamphetamine, and
10 by implication that she and Plaintiff Mr. Smith should be separated from Newborn baby
11 J.A.S., causing the Plaintiffs Mr. and Mrs. Smith to feel grief, fear, anxiety, stress,
12 chagrin, disappointment, worry, shame, humiliation, and, embarrassment.

13 3268. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
14 be severe, in that the distress has manifested itself physical symptoms that include, but
15 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
16 of emotional distress to the Defendant's alleged intentional infliction of emotional
17 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
18 separation anxiety from newborn baby J.A.S., insomnia, depression, PTSD symptoms
19 including staring into space while reliving the incident, muscle tightness and back
20 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
21 manifestations of emotional distress due to the Defendant's alleged intentional infliction
22 of emotional distress: intense headaches, depression, stomach upset and nausea,
23 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving

1 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
2 sometimes forming open sores on his scalp and face.

3 3269. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
4 specialized PTSD therapist to process and heal from the emotional distress foisted
5 upon them.

6 3270. Upon information and belief, each of the listed Defendants in this claim,
7 Anderson Labs and Ms. Emily Miller, MD were in a position of actual or apparent
8 authority over the Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S., and each
9 Defendant had the power to affect the interest of the Smith Family to remain intact.

10 3271. Defendants Anderson Labs and Ms. Emily Miller, MD's conduct violated Plaintiffs'
11 rights under Pennsylvania common law intentional infliction of emotional distress.

12 3272. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
13 evidence that each of the listed Defendants conspired with at least one other Defendant
14 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
15 Plaintiffs.

16 3273. The conspiracy between the Defendant parties and their agents, employees,
17 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
18 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

19 3274. Upon information and belief, Plaintiff can demonstrate by a preponderance of
20 evidence that the Defendant Anderson Labs supervised Ms. Emily Miller, MD in
21 connection with this allegation and is therefore liable under a legal theory of respondeat
22 superior.

1 3275. Accordingly, and in connection with the alleged intentional infliction of emotional
2 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request Anderson Labs
3 be required to adopt a third-party training program demonstrates the appropriate need
4 for accurate differential testing between legal amphetamines and illegal
5 methamphetamines.

6 3276. Accordingly, and in connection with the alleged intentional infliction of emotional
7 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request Anderson Labs
8 be required to immediately cease undifferentiated testing between legal amphetamines
9 and illegal methamphetamines, and, in addition, both categories of indication
10 (amphetamine and methamphetamine) must be clearly separated in lab reports.

11 3277. Accordingly, and in connection with the alleged intentional infliction of emotional
12 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
13 Persons be required to attend and pass a rigorous a third-party training program which
14 demonstrates the appropriate need for accurate differential testing between legal
15 amphetamines and illegal methamphetamines.

16 3278. Accordingly, if a third-party cannot be found to render the appropriately rigorous
17 training course, then Anderson Labs should create their own legal training program on
18 when it is appropriate to separate a child from its parents including training which
19 demonstrates the appropriate need for accurate differential testing between legal
20 amphetamines and illegal methamphetamines; and, before the created program is
21 implemented, the program must be approved by an appropriate court or federal agency
22 for review; and, the program must be implemented within 180 days of the valid
23 judgment of this honorable Court.

1 3279. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
2 conduct, including but not limited to, emotional and psychological distress, pain and
3 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
4 appropriate compensatory damages to account for PTSD therapies and other related
5 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
6 request an amount of \$84,800 in compensatory damages per Defendant.

7 3280. Given the substantial wealth of the Defendants Anderson Labs and Ms. Emily
8 Miller, MD and therefore, their ability to afford the appropriate training to avoid this
9 egregious violation of the Pennsylvania Common Law, and, since harm was actually
10 caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm
11 future postpartum families, and because the acts of the Defendants and their agents,
12 assigns, or employees callously disregarded the Plaintiff's rights in a reckless and
13 wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on
14 Defendants Anderson Labs and Ms. Emily Miller, MD to deter such Defendants from
15 committing to such conduct in the future which violates Commonwealth of Pennsylvania
16 Common Law Plaintiffs respectfully request an amount of \$5,000,000 in punitive
17 damages per Defendants Anderson Labs, and Ms. Emily Miller, MD.

18 3281. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
19 suffered any actual injury despite the deprivation of their common law rights, the
20 Plaintiffs respectfully request a nominal judgment of \$1.00.

21 **XLIV. Intentional Infliction of Emotional Distress V**

1 Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Cynthia
2 M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie
3 Wheeler, DO & Ms. Patricia Bates, CRNP

4 3282. To plead an intentional infliction of emotional distress claim under Pennsylvania
5 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
6 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
7 that was severe.³²²

8 3283. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
9 has been found only where the conduct has been so outrageous in character, and so
10 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
11 as atrocious, and utterly intolerable in a civilized community.'"³²³

³²²*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³²³*Id.*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

1 3284. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
 2 must allege that [they] suffered "severe" emotional distress resulting from the
 3 Defendant's conduct.³²⁴

4 3285. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
 5 disappointment, worry and nausea" all indicate "severe" emotional distress[,]”³²⁵ as well
 6 as, “fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
 7 [and] mental anguish also indicate “severe emotional distress.”³²⁶

8 3286. "The extreme and outrageous character of conduct may arise from an abuse by a
 9 person in a position of actual or apparent authority over another, or by one with the
 10 power to affect the other's interests." ³²⁷

11 3287. IIED (1): The Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms.
 12 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms.
 13 Chaminie Wheeler, DO, and Ms. Patricia Bates, CRNP’s actions were intentional and/or
 14 reckless when as agents, employees, or assigns of a medical provider, included in
 15 Newborn baby J.A.S.’s medical records the false medical information erroneously
 16 stating that Plaintiff Mrs. Smith ingested methamphetamine.

³²⁴*Id* at *10-11, citing, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); See also, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³²⁵*Id*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³²⁶*Id*.

³²⁷ *Id* at *8.

1 3288. IIED (2): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
2 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms.
3 Chaminie Wheeler, DO, and Ms. Patricia Bates, CRNP's actions were extreme and
4 outrageous because these false statements were repeated and reinforced in Newborn
5 baby J.A.S.'s medical records in an attempt to vitiate the actions of Plaintiffs Mr. and
6 Mrs. Smith and to justify the atrocious behavior of the Defendants, which was so
7 outrageous in character, and so extreme in degree, as to go beyond all possible bounds
8 of decency, and to be regarded as atrocious, and utterly intolerable in a civilized
9 community.

10 3289. IIED (3): The Defendants actions actually caused the distress to the Plaintiffs
11 when Plaintiffs Mr. and Mrs. Smith were forcibly and against their will removed from
12 Defendant St. Luke's Hospital property under threat of arrest, because Defendants St.
13 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Cynthia M. Shultz, MD, Mr. Patrick
14 Philpot, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, DO, and Ms. Patricia
15 Bates, CRNP, concocted and/or ratified the conveyed false information that Plaintiff
16 Mrs. Smith ingested methamphetamine and that she and Plaintiff Mr. Smith should be
17 separated from Newborn baby J.A.S. because they are abusive people towards
18 newborn children, causing the Plaintiffs Mr. and Mrs. Smith to feel grief, fear, anxiety,
19 stress, chagrin, disappointment, worry, shame, humiliation, and, embarrassment.

20 3290. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
21 be severe, in that the distress has manifested itself physical symptoms that include, but
22 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
23 of emotional distress to the Defendant's alleged intentional infliction of emotional

1 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
2 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms
3 including staring into space while reliving the incident, muscle tightness and back
4 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
5 manifestations of emotional distress due to the Defendant's alleged intentional infliction
6 of emotional distress: intense headaches, depression, stomach upset and nausea,
7 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
8 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
9 sometimes forming open sores on his scalp and face.

10 3291. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
11 specialized PTSD therapist to process and heal from the emotional distress foisted
12 upon them.

13 3292. Upon information and belief, each of the listed Defendants in this claim, St.
14 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Cynthia M. Shultz, MD, Mr. Patrick
15 Philpot, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, DO, and Ms. Patricia
16 Bates, CRNP, were in a position of actual or apparent authority over the Plaintiffs Mr.
17 and Mrs. Smith and Newborn baby J.A.S., and each Defendant had the power to affect
18 the interest of the Smith Family to remain intact.

19 3293. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Cynthia M.
20 Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler,
21 DO, and Ms. Patricia Bates, CRNP's conduct violated Plaintiffs' rights under
22 Pennsylvania common law intentional infliction of emotional distress.

1 3294. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that each of the listed Defendants conspired with at least one other Defendant
3 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
4 Plaintiffs.

5 3295. The conspiracy between the Defendant parties and their agents, employees,
6 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
7 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

8 3296. Upon information and belief, Plaintiff can demonstrate by a preponderance of
9 evidence that the Defendants St. Luke's Hospital, Onsite Neonatal, and OBHG PA
10 supervised Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago,
11 MD, Ms. Chaminie Wheeler, DO, and Ms. Patricia Bates, CRNP in connection with this
12 allegation and are therefore liable under a legal theory of respondeat superior.

13 3297. Accordingly, and in connection with the alleged intentional infliction of emotional
14 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
15 Entities be required to adopt a third-party training program which demonstrates
16 appropriate circumstances under which a child should be reasonably separated from its
17 natural parents, and the specific legal procedures to adhere to for such a separation to
18 take place.

19 3298. Accordingly, and in connection with the alleged intentional infliction of emotional
20 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
21 Persons be required to attend and pass a rigorous a third-party training program which
22 demonstrates appropriate circumstances under which a child should be reasonably

1 separated from its natural parents, and the specific legal procedures to adhere to for
2 such a separation to take place.

3 3299. Accordingly, if a third-party cannot be found to render the appropriately rigorous
4 training course, then the Defendant Entities should create their own legal training
5 program which demonstrates appropriate circumstances under which a child should be
6 reasonably separated from its natural parents, and the specific legal procedures to
7 adhere to for such a separation to take place, including ; and, before the created
8 program is implemented, the program must be approved by an appropriate court or
9 federal agency for review; and, the program must be implemented within 180 days of
10 the valid judgment of this honorable Court.

11 3300. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
12 conduct, including but not limited to, emotional and psychological distress, pain and
13 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
14 appropriate compensatory damages to account for PTSD therapies and other related
15 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
16 request an amount of \$84,800 in compensatory damages per Defendant.

17 3301. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
18 Neonatal, and OBHG PA supervised Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
19 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, DO, and Ms. Patricia Bates,
20 CRNP and therefore, their ability to afford the appropriate training to avoid this
21 egregious violation of the Pennsylvania Common Law, and, since harm was actually
22 caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm
23 future postpartum families, and because the acts of the Defendants and their agents,

1 assigns, or employees callously disregarded the Plaintiff's rights in a reckless and
 2 wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on
 3 Defendants St. Luke's Hospital, Onsite Neonatal, and OBHG PA supervised Ms.
 4 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Mr. Gilberto Santiago, MD, Ms.
 5 Chaminie Wheeler, DO, and Ms. Patricia Bates, CRNP to deter such Defendants from
 6 committing to such conduct in the future which violates Commonwealth of Pennsylvania
 7 Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive
 8 damages per Defendants Mr. Gilberto Santiago, MD, and Ms. Patricia Bates, CRNP;
 9 \$5,000,000 per Defendants Mr. Patrick Philpot, DO, and Ms. Chaminie Wheeler, DO;
 10 and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, and
 11 Ms. Cynthia M. Shultz, MD.

12 3302. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
 13 suffered any actual injury despite the deprivation of their common law rights, the
 14 Plaintiffs respectfully request a nominal judgment of \$1.00.

15 **XLV. Intentional Infliction of Emotional Distress VI**

16 Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Bethlehem
 17 Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and Gynecological
 18 Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
 19 DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E.
 20 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
 21 Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr.

1 Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP,
 2 "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr.
 3 Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
 4 the "Hospital Leadership Team" & Mr. Jerry Hric, MD

5 3303. To plead an intentional infliction of emotional distress claim under Pennsylvania
 6 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
 7 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
 8 that was severe.³²⁸

9 3304. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
 10 has been found only where the conduct has been so outrageous in character, and so
 11 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
 12 as atrocious, and utterly intolerable in a civilized community.'"³²⁹

³²⁸*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³²⁹*Id.*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

1 3305. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
 2 must allege that [they] suffered "severe" emotional distress resulting from the
 3 Defendant's conduct.³³⁰

4 3306. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
 5 disappointment, worry and nausea" all indicate "severe" emotional distress[.]"³³¹ as well
 6 as, "fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
 7 [and] mental anguish also indicate "severe emotional distress."³³²

8 3307. "The extreme and outrageous character of conduct may arise from an abuse by a
 9 person in a position of actual or apparent authority over another, or by one with the
 10 power to affect the other's interests." ³³³

11 3308. IIED (1): The Defendants, St. Luke's Hospital, Onsite Neonatal, OBHG PA,
 12 Bethlehem Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and
 13 Gynecological Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
 14 Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E.
 15 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
 16 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I.

³³⁰*Id* at *10-11, citing, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); See also, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³³¹*Id*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³³²*Id*.

³³³*Id* at *8.

1 Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, “Security
2 Supervisor ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq.,
3 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital
4 Leadership Team” actions were intentional and/or reckless when as agents, employees,
5 or assigns of a medical provider, accused Mrs. Smith of illegal drug use, separated both
6 Plaintiffs Mr. & Mrs. Smith from Newborn baby J.A.S., and ejected Plaintiffs Mr. and
7 Mrs. Smith against their will and consent from Defendant St. Luke’s Hospital before
8 performing any cursory investigation into the likelihood that Plaintiff Mrs. Smith had
9 actually ingested methamphetamine.

10 3309. IIED (2): The Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA,
11 Bethlehem Neonatal, St. Luke’s Physician’s Group, St. Luke’s Obstetrics and
12 Gynecological Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
13 Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E.
14 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
15 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I.
16 Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, “Security
17 Supervisor ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq.,
18 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital
19 Leadership Team’s” actions were extreme and outrageous because Defendant St.
20 Luke’s Hospital, its affiliates, employees, agents, and/or assigns who were in a position
21 to preserve the Smith Family Unit with a mere cursory investigation into whether Plaintiff
22 Mrs. Smith actually ingested methamphetamine—simply chose not to do so and further
23 repudiated obvious exculpatory evidence including the lack of withdrawal of

1 methamphetamine symptoms in both Plaintiff Mrs. Smith and Newborn baby J.A.S.—
2 actions which were so outrageous in character, and so extreme in degree, as to go
3 beyond all possible bounds of decency, and to be regarded as atrocious, and utterly
4 intolerable in a civilized community.

5 3310. IIED (3): Upon information and belief, the Defendants actions actually caused
6 the distress to the Plaintiffs when Plaintiffs Mr. and Mrs. Smith were forcibly and against
7 their will removed from Defendant St. Luke's Hospital property under threat of arrest,
8 because Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Bethlehem
9 Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and Gynecological
10 Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO,
11 Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis,
12 MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD,
13 Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD,
14 Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, "Security Supervisor
15 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert
16 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
17 Team", in an effort to be intentionally obtuse to the Smith Family situation, in an attempt
18 to exculpate themselves from liability concerning the Smith Family—actively turned a
19 blind eye to a reasonable investigation into whether Plaintiff Mrs. Smith actually
20 ingested methamphetamine, causing the Plaintiffs Mr. and Mrs. Smith to feel grief, fear,
21 anxiety, stress, chagrin, disappointment, worry, shame, humiliation, and,
22 embarrassment.

1 3311. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
2 be severe, in that the distress has manifested itself physical symptoms that include, but
3 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
4 of emotional distress to the Defendant's alleged intentional infliction of emotional
5 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
6 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms
7 including staring into space while reliving the incident, muscle tightness and back
8 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
9 manifestations of emotional distress due to the Defendant's alleged intentional infliction
10 of emotional distress: intense headaches, depression, stomach upset and nausea,
11 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
12 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
13 sometimes forming open sores on his scalp and face.

14 3312. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
15 specialized PTSD therapist to process and heal from the emotional distress foisted
16 upon them.

17 3313. Upon information and belief, each of the listed Defendants in this claim, St.
18 Luke's Hospital property under threat of arrest, because Defendants St. Luke's Hospital,
19 Onsite Neonatal, OBHG PA, Bethlehem Neonatal, St. Luke's Physician's Group, St.
20 Luke's Obstetrics and Gynecological Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M.
21 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb,
22 MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
23 Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A.

1 Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia
2 Bates, CNRP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
3 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
4 the "Hospital Leadership Team", and Mr. Jerry Hric, MD were in a position of actual or
5 apparent authority over the Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S., and
6 each Defendant had the power to affect the interest of the Smith Family to remain intact.

7 3314. Defendants St. Luke's Hospital property under threat of arrest, because
8 Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Bethlehem Neonatal, St.
9 Luke's Physician's Group, St. Luke's Obstetrics and Gynecological Assoc., Ms. Teresa
10 Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
11 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.
12 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
13 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
14 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, "Security Supervisor 'Unknown'",
15 "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
16 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team", and Mr.
17 Jerry Hric, MD's conduct violated Plaintiffs' rights under Pennsylvania common law
18 intentional infliction of emotional distress.

19 3315. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
20 evidence that each of the listed Defendants conspired with at least one other Defendant
21 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
22 Plaintiffs.

1 3316. The conspiracy between the Defendant parties and their agents, employees,
2 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
3 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

4 3317. Upon information and belief, Plaintiff can demonstrate by a preponderance of
5 evidence that the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA,
6 Bethlehem Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and
7 Gynecological Assoc., and Mr. Jerry Hric, MD supervised Ms. Teresa Marlino, MD, Ms.
8 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi
9 N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms.
10 Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly
11 A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia
12 Bates, CNRP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
13 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
14 and the "Hospital Leadership Team," in connection with this allegation and are therefore
15 liable under a legal theory of respondeat superior.

16 3318. Accordingly, and in connection with the alleged intentional infliction of emotional
17 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
18 Entities be required to adopt a third-party training program which demonstrates
19 appropriate circumstances under which a child should be reasonably separated from its
20 natural parents, and the specific legal procedures to adhere to for such a separation to
21 take place, including.

22 3319. Accordingly, and in connection with the alleged intentional infliction of emotional
23 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant

1 Persons be required to attend and pass a rigorous a third-party training program which
2 demonstrates appropriate circumstances under which a child should be reasonably
3 separated from its natural parents, and the specific legal procedures to adhere to for
4 such a separation to take place, including.

5 3320. Accordingly, if a third-party cannot be found to render the appropriately rigorous
6 training course, then the Defendant Entities should create their own legal training
7 program which demonstrates appropriate circumstances under which a child should be
8 reasonably separated from its natural parents, and the specific legal procedures to
9 adhere to for such a separation to take place, including; and, before the created
10 program is implemented, the program must be approved by an appropriate court or
11 federal agency for review; and, the program must be implemented within 180 days of
12 the valid judgment of this honorable Court.

13 3321. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
14 conduct, including but not limited to, emotional and psychological distress, pain and
15 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
16 appropriate compensatory damages to account for PTSD therapies and other related
17 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
18 request an amount of \$84,800 in compensatory damages per Defendant.

19 3322. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
20 Neonatal, OBHG PA, Bethlehem Neonatal, St. Luke's Physician's Group, St. Luke's
21 Obstetrics and Gynecological Assoc., and Mr. Jerry Hric, MD supervised Ms. Teresa
22 Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
23 Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr.

1 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
2 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms.
3 Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, "Security Supervisor 'Unknown'",
4 "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
5 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team," and Mr.
6 Jerry Hric, MD and therefore, their ability to afford the appropriate training to avoid this
7 egregious violation of the Pennsylvania Common Law, and, since harm was actually
8 caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm
9 future postpartum families, and because the acts of the Defendants and their agents,
10 assigns, or employees callously disregarded the Plaintiff's rights in a reckless and
11 wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on
12 Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Bethlehem Neonatal, St.
13 Luke's Physician's Group, St. Luke's Obstetrics and Gynecological Assoc., and Mr.
14 Jerry Hric, MD supervised Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr.
15 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
16 Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD,
17 Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr.
18 Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP,
19 "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve
20 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the
21 "Hospital Leadership Team," and Mr. Jerry Hric, MD to deter such Defendants from
22 committing to such conduct in the future which violates Commonwealth of Pennsylvania
23 Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive

1 damages per Defendants Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms.
 2 Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD,
 3 Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr.
 4 Gilberto I. Santiago, MD, and Ms. Patricia Bates, CNRP; \$5,000,000 per Defendants
 5 Bethlehem Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and
 6 Gynecological Assoc., Mr. Patrick Philpot, DO, Ms. Chaminie Wheeler, MD, "Security
 7 Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq.,
 8 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership
 9 Team", and Mr. Jerry Hric, MD; and \$10,000,000 per Defendants St. Luke's Hospital,
 10 Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia M. Shultz, MD.
 11 3323. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
 12 suffered any actual injury despite the deprivation of their common law rights, the
 13 Plaintiffs respectfully request a nominal judgment of \$1.00.

14 **XLVI. Intentional Infliction of Emotional Distress VII**

15 Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, Bethlehem
 16 Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and Gynecological
 17 Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot,
 18 DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E.
 19 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
 20 Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr.
 21 Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP,

1 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn
 2 Hoffman, the "Hospital Leadership Team" & Mr. Jerry Hric, MD

3 3324. To plead an intentional infliction of emotional distress claim under Pennsylvania
 4 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
 5 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
 6 that was severe.³³⁴

7 3325. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
 8 has been found only where the conduct has been so outrageous in character, and so
 9 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
 10 as atrocious, and utterly intolerable in a civilized community.'"³³⁵

11 3326. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
 12 must allege that [they] suffered "severe" emotional distress resulting from the
 13 Defendant's conduct.³³⁶

³³⁴*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³³⁵*Id*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³³⁶*Id* at *10-11, *citing*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also*, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

1 3327. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
 2 disappointment, worry and nausea" all indicate "severe" emotional distress[,]”³³⁷ as well
 3 as, “fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
 4 [and] mental anguish also indicate “severe emotional distress.”³³⁸

5 3328. "The extreme and outrageous character of conduct may arise from an abuse by a
 6 person in a position of actual or apparent authority over another, or by one with the
 7 power to affect the other's interests." ³³⁹

8 3329. IIED (1): The Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA,
 9 Bethlehem Neonatal, St. Luke’s Physician’s Group, St. Luke’s Obstetrics and
 10 Gynecological Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
 11 Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E.
 12 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
 13 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I.
 14 Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve
 15 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
 16 “Hospital Leadership Team’s” actions were intentional and/or reckless when as agents,
 17 employees, or assigns of a medical provider, accused, separated, and ejected Plaintiffs
 18 Mr. and Mrs. Smith from Defendant St. Luke’s Hospital before offering any appeals
 19 process for the decision to break up the Smith Family Unit.

³³⁷ *Id.*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³³⁸ *Id.*

³³⁹ *Id.* at *8.

1 3330. IIED (2): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA,
2 Bethlehem Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and
3 Gynecological Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick
4 Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E.
5 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
6 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I.
7 Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve
8 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
9 "Hospital Leadership Team's" actions were extreme and outrageous because
10 Defendant St. Luke's Hospital, its affiliates, employees, agents, and/or assigns who
11 were in a position to preserve the Smith Family Unit with an appropriate appeals
12 process—simply chose not to do so—actions which were so outrageous in character,
13 and so extreme in degree, as to go beyond all possible bounds of decency, and to be
14 regarded as atrocious, and utterly intolerable in a civilized community.

15 3331. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
16 when Plaintiffs Mr. and Mrs. Smith were forcibly and against their will removed from
17 Defendant St. Luke's Hospital property under threat of arrest, because Defendants St.
18 Luke's Hospital, Onsite Neonatal, OBHG PA, Bethlehem Neonatal, St. Luke's
19 Physician's Group, St. Luke's Obstetrics and Gynecological Assoc., Ms. Teresa Marlino,
20 MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD,
21 Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD,
22 Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms.
23 Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms.

1 Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
2 Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" did not offer any type of
3 appeals process for the outlandish and grievous accusations of child abuse being levied
4 at the Plaintiff Smith Family, causing the Plaintiffs Mr. and Mrs. Smith to feel grief, fear,
5 anxiety, stress, chagrin, disappointment, worry, shame, humiliation, confusion,
6 frustration, disbelief, and embarrassment.

7 3332. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
8 be severe, in that the distress has manifested itself physical symptoms that include, but
9 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
10 of emotional distress to the Defendant's alleged intentional infliction of emotional
11 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
12 separation anxiety from newborn baby J.A.S., insomnia, depression, PTSD symptoms
13 including staring into space while reliving the incident, muscle tightness and back
14 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
15 manifestations of emotional distress due to the Defendant's alleged intentional infliction
16 of emotional distress: intense headaches, depression, stomach upset and nausea,
17 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
18 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
19 sometimes forming open sores on his scalp and face.

20 3333. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
21 specialized PTSD therapist to process and heal from the emotional distress foisted
22 upon them.

1 3334. Upon information and belief, each of the listed Defendants in this claim, St.
2 Luke's Hospital, Onsite Neonatal, OBHG PA, Bethlehem Neonatal, St. Luke's
3 Physician's Group, St. Luke's Obstetrics and Gynecological Assoc., Ms. Teresa Marlino,
4 MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD,
5 Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD,
6 Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms.
7 Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms.
8 Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla
9 Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team," and Mr. Jerry Hric, MD,
10 were in a position of actual or apparent authority over the Plaintiffs Mr. and Mrs. Smith
11 and Newborn baby J.A.S., and each Defendant had the power to affect the interest of
12 the Smith Family to remain intact.

13 3335. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Bethlehem
14 Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and Gynecological
15 Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO,
16 Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis,
17 MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD,
18 Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD,
19 Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr.
20 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership
21 Team," and Mr. Jerry Hric, MD's conduct violated Plaintiffs' rights under Pennsylvania
22 common law intentional infliction of emotional distress.

1 3336. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that each of the listed Defendants conspired with at least one other Defendant
3 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
4 Plaintiffs.

5 3337. The conspiracy between the Defendant parties and their agents, employees,
6 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
7 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

8 3338. Upon information and belief, Plaintiff can demonstrate by a preponderance of
9 evidence that the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA,
10 Bethlehem Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and
11 Gynecological Assoc., and Mr. Jerry Hric, MD, supervised Ms. Teresa Marlino, MD, Ms.
12 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi
13 N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms.
14 Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly
15 A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia
16 Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
17 Dawn Hoffman, and the "Hospital Leadership Team," in connection with this allegation
18 and are therefore liable under a legal theory of respondeat superior.

19 3339. Accordingly, and in connection with the alleged intentional infliction of emotional
20 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
21 Entities be required to adopt a third-party training program which demonstrates
22 appropriate circumstances under which a child should be reasonably separated from its

1 natural parents, and the specific legal procedures to adhere to for such a separation to
2 take place.

3 3340. Accordingly, and in connection with the alleged intentional infliction of emotional
4 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
5 Persons be required to attend and pass a rigorous a third-party training program which
6 demonstrates appropriate circumstances under which a child should be reasonably
7 separated from its natural parents, and the specific legal procedures to adhere to for
8 such a separation to take place.

9 3341. Accordingly, if a third-party cannot be found to render the appropriately rigorous
10 training course, then the Defendant Entities should create their own legal training
11 program which demonstrates appropriate circumstances under which a child should be
12 reasonably separated from its natural parents, and the specific legal procedures to
13 adhere to for such a separation to take place, including; and, before the created
14 program is implemented, the program must be approved by an appropriate court or
15 federal agency for review; and, the program must be implemented within 180 days of
16 the valid judgment of this honorable Court.

17 3342. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
18 conduct, including but not limited to, emotional and psychological distress, pain and
19 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
20 appropriate compensatory damages to account for PTSD therapies and other related
21 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
22 request an amount of \$84,800 in compensatory damages per Defendant.

3343. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Bethlehem Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and Gynecological Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team," and Mr. Jerry Hric, MD and therefore, their ability to afford the appropriate training to avoid this egregious violation of the Pennsylvania Common Law, and, since harm was actually caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Bethlehem Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and Gynecological Assoc., Ms. Teresa Marlino, MD, Ms. Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, Ms. Chaminie Wheeler, MD, Ms. Patricia Bates, CNRP, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team," and Mr. Jerry Hric, MD to deter such

Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants Ms. Dianne R. Jacobetz, MD, Mr. Shadi N. Malaeb, MD, Ms. Marilyn E. Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilberto I. Santiago, MD, and Ms. Patricia Bates, CNRP; \$5,000,000 per Defendants Bethlehem Neonatal, St. Luke's Physician's Group, St. Luke's Obstetrics and Gynecological Assoc., Mr. Patrick Philpot, DO, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, the "Hospital Leadership Team", and Mr. Jerry Hric, MD; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia M. Shultz, MD.

3344. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XLVII. Intentional Infliction of Emotional Distress VIII

Mr. & Mrs. Smith v. St. Luke's Hospital, Onsite Neonatal, St. Luke's Physician Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, & Ms. Dianne R. Jacobetz, MD

3345. To plead an intentional infliction of emotional distress claim under Pennsylvania law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)

1 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
2 that was severe.³⁴⁰

3 3346. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
4 has been found only where the conduct has been so outrageous in character, and so
5 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
6 as atrocious, and utterly intolerable in a civilized community.'"³⁴¹

7 3347. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
8 must allege that [they] suffered "severe" emotional distress resulting from the
9 Defendant's conduct.³⁴²

10 3348. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
11 disappointment, worry and nausea" all indicate "severe" emotional distress[.]"³⁴³ as well

³⁴⁰*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³⁴¹*Id.*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³⁴²*Id.* at *10-11, *citing*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also*, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁴³*Id.*, *quoting*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

1 as, “fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
2 [and] mental anguish also indicate “severe emotional distress.”³⁴⁴

3 3349. “The extreme and outrageous character of conduct may arise from an abuse by a
4 person in a position of actual or apparent authority over another, or by one with the
5 power to affect the other's interests.” ³⁴⁵

6 3350. IIED (1): The Defendants St. Luke’s Hospital, Onsite Neonatal, St. Luke’s
7 Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, and Ms.
8 Dianne Jacobetz, MD’s actions were intentional and/or reckless when as agents,
9 employees, or assigns of a medical provider, did not ever, in any form of
10 communication, convey the statement that Newborn baby J.A.S. was in a potential life-
11 threatening condition to Plaintiff parents Mr. and Mrs. Smith, while actively recording
12 such a potential in Newborn baby J.A.S.’s medical records in order to ensure that
13 Plaintiffs Mr. and Mrs. Smith could be restricted from access to their child upon a whim
14 of the Defendants.

15 3351. IIED (2): The Defendants St. Luke’s Hospital, Onsite Neonatal, St. Luke’s
16 Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, and Ms.
17 Dianne Jacobetz, MD’s actions were extreme and outrageous because the Defendants
18 were actively deceiving Plaintiffs Mr. and Mrs. Smith as to the potentially grave medical
19 status of their newborn baby—actions which were so outrageous in character, and so

³⁴⁴ *Id.*

³⁴⁵ *Id* at *8.

1 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
2 as atrocious, and utterly intolerable in a civilized community.

3 3352. IIED (3): The Defendants actions actually caused the distress to the Plaintiffs
4 when Plaintiffs Mr. and Mrs. Smith were removed against their will and consent from St.
5 Luke's Hospital property under threat of arrest, because Defendants St. Luke's Hospital,
6 Onsite Neonatal, St. Luke's Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto
7 I. Santiago, MD, and Ms. Dianne Jacobetz, MD, began the process of breaking up the
8 Smith Family Unit by making the Smith Family appear to want to expedite themselves
9 home to consume methamphetamine by writing grievous assertions in Newborn baby
10 J.A.S.'s medical records that Plaintiffs Mr. and Mrs. Smith appeared to be outright
11 ignoring when discussing the status of Newborn baby J.A.S., causing the Plaintiffs Mr.
12 and Mrs. Smith to feel grief, fear, anxiety, stress, chagrin, disappointment, worry,
13 shame, humiliation, confusion, disbelief, and embarrassment.

14 3353. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
15 be severe, in that the distress has manifested itself physical symptoms that include, but
16 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
17 of emotional distress to the Defendant's alleged intentional infliction of emotional
18 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
19 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms
20 including staring into space while reliving the incident, muscle tightness and back
21 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
22 manifestations of emotional distress due to the Defendant's alleged intentional infliction
23 of emotional distress: intense headaches, depression, stomach upset and nausea,

1 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
2 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
3 sometimes forming open sores on his scalp and face.

4 3354. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
5 specialized PTSD therapist to process and heal from the emotional distress foisted
6 upon them.

7 3355. Upon information and belief, each of the listed Defendants in this claim, St.
8 Luke's Hospital, Onsite Neonatal, St. Luke's Physicians Group, Ms. Chaminie Wheeler,
9 DO, Mr. Gilberto I. Santiago, MD, and Ms. Dianne Jacobetz, MD, were in a position of
10 actual or apparent authority over the Plaintiffs Mr. and Mrs. Smith and Newborn baby
11 J.A.S., and each Defendant had the power to affect the interest of the Smith Family to
12 remain intact.

13 3356. Defendants St. Luke's Hospital, Onsite Neonatal, St. Luke's Physicians Group,
14 Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, and Ms. Dianne Jacobetz,
15 MD's conduct violated Plaintiffs' rights under Pennsylvania common law intentional
16 infliction of emotional distress.

17 3357. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
18 evidence that each of the listed Defendants conspired with at least one other Defendant
19 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
20 Plaintiffs.

21 3358. The conspiracy between the Defendant parties and their agents, employees,
22 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
23 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

1 3359. Upon information and belief, Plaintiff can demonstrate by a preponderance of
2 evidence that the Defendants St. Luke's Hospital, Onsite Neonatal, and St. Luke's
3 Physicians Group, supervised Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD,
4 and Ms. Dianne Jacobetz, MD in connection with this allegation and are therefore liable
5 under a legal theory of respondeat superior.

6 3360. Accordingly, and in connection with the alleged intentional infliction of emotional
7 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
8 Entities be required to adopt a third-party training program which demonstrates
9 appropriate circumstances under which a child should be reasonably separated from its
10 natural parents, and the specific legal procedures to adhere to for such a separation to
11 take place.

12 3361. Accordingly, and in connection with the alleged intentional infliction of emotional
13 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
14 Persons be required to attend and pass a rigorous a third-party training program which
15 demonstrates appropriate circumstances under which a child should be reasonably
16 separated from its natural parents, and the specific legal procedures to adhere to for
17 such a separation to take place.

18 3362. Accordingly, if a third-party cannot be found to render the appropriately rigorous
19 training course, then the Defendant Entities should create their own legal training
20 program which demonstrates appropriate circumstances under which a child should be
21 reasonably separated from its natural parents, and the specific legal procedures to
22 adhere to for such a separation to take place, including; and, before the created
23 program is implemented, the program must be approved by an appropriate court or

1 federal agency for review; and, the program must be implemented within 180 days of
2 the valid judgment of this honorable Court.

3 3363. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
4 conduct, including but not limited to, emotional and psychological distress, pain and
5 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
6 appropriate compensatory damages to account for PTSD therapies and other related
7 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
8 request an amount of \$84,800 in compensatory damages per Defendant.

9 3364. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
10 Neonatal, St. Luke's Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I.
11 Santiago, MD, and Ms. Dianne Jacobetz, MD and therefore, their ability to afford the
12 appropriate training to avoid this egregious violation of the Pennsylvania Common Law,
13 and, since harm was actually caused to the current Plaintiff Smith Family, and since
14 harm is likely to continue to harm future postpartum families, and because the acts of
15 the Defendants and their agents, assigns, or employees callously disregarded the
16 Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the
17 imposition of punitive damages on Defendants St. Luke's Hospital, Onsite Neonatal, St.
18 Luke's Physicians Group, Ms. Chaminie Wheeler, DO, Mr. Gilberto I. Santiago, MD, and
19 Ms. Dianne Jacobetz, MD to deter such Defendants from committing to such conduct in
20 the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs
21 respectfully request an amount of \$1,000,000 in punitive damages per Defendants Mr.
22 Gilberto I. Santiago, MD, and Ms. Dianne R. Jacobetz, MD; \$5,000,000 per Defendants

1 St. Luke's Physician Group, and Ms. Chaminie Wheeler, DO; and \$10,000,000 per
 2 Defendants St. Luke's Hospital, and Onsite Neonatal.
 3 3365. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
 4 suffered any actual injury despite the deprivation of their common law rights, the
 5 Plaintiffs respectfully request a nominal judgment of \$1.00.

6 **XLVIII. Intentional Infliction of Emotional Distress IX**

7 Mr. & Mrs. Smith v. St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr Robert L. Wax,
 8 Esq., Ms. Darla Frack, Ms Dawn Hoffman, and the "Hospital Leadership Team"

9 3366. To plead an intentional infliction of emotional distress claim under Pennsylvania
 10 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
 11 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
 12 that was severe.³⁴⁶

13 3367. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
 14 has been found only where the conduct has been so outrageous in character, and so
 15 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
 16 as atrocious, and utterly intolerable in a civilized community.'"³⁴⁷

³⁴⁶*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³⁴⁷*Id.*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

1 3368. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
 2 must allege that [they] suffered "severe" emotional distress resulting from the
 3 Defendant's conduct.³⁴⁸

4 3369. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
 5 disappointment, worry and nausea" all indicate "severe" emotional distress[,]”³⁴⁹ as well
 6 as, “fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
 7 [and] mental anguish also indicate “severe emotional distress.”³⁵⁰

8 3370. "The extreme and outrageous character of conduct may arise from an abuse by a
 9 person in a position of actual or apparent authority over another, or by one with the
 10 power to affect the other's interests." ³⁵¹

11 3371. IIED (1): The Defendants St. Luke’s Hospital, Mr. Steve Lanshe, Esq., Mr. Robert
 12 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership
 13 Team’s” actions were intentional and/or reckless when as agents, employees, or
 14 assigns of a medical provider, did not ever allow Plaintiff Mr. Smith to return to
 15 Defendant St. Luke’s Hospital to be with his postpartum wife Plaintiff Mrs. Smith and

³⁴⁸*Id* at *10-11, citing, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); See also, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁴⁹*Id*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³⁵⁰*Id*.

³⁵¹ *Id* at *8.

1 Newborn baby J.A.S., even though there was not any valid cause to prevent Plaintiff Mr.
2 Smith from being with his family.

3 3372. IIED (2): The Defendants St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr. Robert
4 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, & the "Hospital Leadership Team's"
5 actions were extreme and outrageous because physically separating a newborn child in
6 a NICU from its father under threat of arrest of the father without any cause are actions
7 which were so outrageous in character, and so extreme in degree, as to go beyond all
8 possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in
9 a civilized community.

10 3373. IIED (3): The Defendants actions actually caused the distress to the Plaintiffs
11 when Plaintiffs Mr. and Mrs. Smith were removed against their will and consent from
12 Defendant St. Luke's Hospital property under threat of arrest, because Defendants St.
13 Luke's Hospital, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
14 Dawn Hoffman, & the "Hospital Leadership Team", threatened to have Plaintiff Mr.
15 Smith arrested if he ever returned to Defendant St. Luke's Hospital's property, causing
16 the Plaintiffs Mr. and Mrs. Smith to feel grief, fear, anxiety, stress, chagrin,
17 disappointment, worry, shame, humiliation, and, embarrassment.

18 3374. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
19 be severe, in that the distress has manifested itself physical symptoms that include, but
20 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
21 of emotional distress to the Defendant's alleged intentional infliction of emotional
22 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
23 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms

1 including staring into space while reliving the incident, muscle tightness and back
2 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
3 manifestations of emotional distress due to the Defendant's alleged intentional infliction
4 of emotional distress: intense headaches, depression, stomach upset and nausea,
5 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
6 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
7 sometimes forming open sores on his scalp and face.

8 3375. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
9 specialized PTSD therapist to process and heal from the emotional distress foisted
10 upon them.

11 3376. Upon information and belief, each of the listed Defendants in this claim, St.
12 Luke's Hospital, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
13 Dawn Hoffman, and the "Hospital Leadership Team," were in a position of actual or
14 apparent authority over the Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S., and
15 each Defendant had the power to affect the interest of the Smith Family to remain intact.

16 3377. Defendants St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax,
17 Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team's"
18 conduct violated Plaintiffs' rights under Pennsylvania common law intentional infliction
19 of emotional distress.

20 3378. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
21 evidence that each of the listed Defendants conspired with at least one other Defendant
22 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
23 Plaintiffs.

1 3379. The conspiracy between the Defendant parties and their agents, employees,
2 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
3 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

4 3380. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
5 evidence that the Defendant St. Luke's Hospital supervised Mr. Steve Lanshe, Esq., Mr.
6 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
7 Team" in connection with this allegation and is therefore liable under a legal theory of
8 respondeat superior.

9 3381. Accordingly, and in connection with the alleged intentional infliction of emotional
10 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
11 Entities be required to adopt a third-party training program which demonstrates
12 appropriate circumstances under which a child should be reasonably separated from its
13 natural parents, and the specific legal procedures to adhere to for such a separation to
14 take place, including.

15 3382. Accordingly, and in connection with the alleged intentional infliction of emotional
16 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
17 Persons be required to attend and pass a rigorous a third-party training program which
18 demonstrates appropriate circumstances under which a child should be reasonably
19 separated from its natural parents, and the specific legal procedures to adhere to for
20 such a separation to take place, including.

21 3383. Accordingly, if a third-party cannot be found to render the appropriately rigorous
22 training course, then the Defendant Entities should create their own legal training
23 program which demonstrates appropriate circumstances under which a child should be

1 reasonably separated from its natural parents, and the specific legal procedures to
2 adhere to for such a separation to take place, including; and, before the created
3 program is implemented, the program must be approved by an appropriate court or
4 federal agency for review; and, the program must be implemented within 180 days of
5 the valid judgment of this honorable Court.

6 3384. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
7 conduct, including but not limited to, emotional and psychological distress, pain and
8 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
9 appropriate compensatory damages to account for PTSD therapies and other related
10 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
11 request an amount of \$84,800 in compensatory damages per Defendant.

12 3385. Given the substantial wealth of the Defendants St. Luke's Hospital, Mr. Steve
13 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
14 "Hospital Leadership Team" and therefore, their ability to afford the appropriate training
15 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm
16 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
17 continue to harm future postpartum families, and because the acts of the Defendants
18 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
19 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
20 punitive damages on Defendants St. Luke's Hospital, Mr. Steve Lanshe, Esq., Mr.
21 Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
22 Team" to deter such Defendants from committing to such conduct in the future which
23 violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an

amount of \$5,000,000 in punitive damages per Defendants Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team”; and \$10,000,000 per Defendant St. Luke’s Hospital.

3386. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

XLIX. Intentional Infliction of Emotional Distress X

Mr. & Mrs. Smith v. St. Luke’s Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, & Ms. Cynthia Shultz, MD

3387. To plead an intentional infliction of emotional distress claim under Pennsylvania law, [Plaintiffs] must allege the Defendant’s conduct (1) was intentional or reckless; (2) was extreme and outrageous; (3) actually caused the distress; and (4) caused distress that was severe.³⁵²

3388. “In Pennsylvania, “[l]iability on an intentional infliction of emotional distress claim has been found only where the conduct has been so outrageous in character, and so

³⁵²*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

1 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
2 as atrocious, and utterly intolerable in a civilized community."³⁵³

3 3389. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
4 must allege that [they] suffered "severe" emotional distress resulting from the
5 Defendant's conduct.³⁵⁴

6 3390. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
7 disappointment, worry and nausea" all indicate "severe" emotional distress[,]"³⁵⁵ as well
8 as, "fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
9 [and] mental anguish also indicate "severe emotional distress."³⁵⁶

10 3391. "The extreme and outrageous character of conduct may arise from an abuse by a
11 person in a position of actual or apparent authority over another, or by one with the
12 power to affect the other's interests." ³⁵⁷

13 3392. IIED (1): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
14 Teresa Marlino, MD, and Ms. Cynthia Shultz, MD, actions were intentional and/or

³⁵³*Id*, citing, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³⁵⁴*Id* at *10-11, citing, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); See also, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁵⁵*Id*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³⁵⁶*Id*.

³⁵⁷ *Id* at *8.

1 reckless when as agents, employees, or assigns of a medical provider, did not ever
2 allow Plaintiffs Mr. Smith and Mrs. Smith to object to the care Newborn baby J.A.S. was
3 receiving, and when the Plaintiffs did object to the care being given to Newborn baby
4 J.A.S., Mr. and Mrs. Smith were labeled as too violent to remain in the hospital, and
5 were subsequently ejected from the premises even though there was not any valid
6 cause or legal basis to break up the Smith Family Unit.

7 3393. IIED (2): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
8 Teresa Marlino, MD, and Ms. Cynthia Shultz, MD's actions were extreme and
9 outrageous because physically separating a newborn child in a NICU from its parents
10 merely because of a personal dislike of the parents are actions which were so
11 outrageous in character, and so extreme in degree, as to go beyond all possible bounds
12 of decency, and to be regarded as atrocious, and utterly intolerable in a civilized
13 community.

14 3394. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
15 when Plaintiffs Mr. and Mrs. Smith were removed against their will and consent from
16 Defendant St. Luke's Hospital property under threat of arrest, because Defendants St.
17 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia
18 Shultz, MD, threatened to have Plaintiffs Mr. and Mrs. Smith arrested upon withdrawing
19 consent for Newborn baby J.A.S.'s treatment, causing the Plaintiffs Mr. and Mrs. Smith
20 to feel grief, fear, anxiety, stress, chagrin, disappointment, worry, shame, humiliation,
21 and, embarrassment.

22 3395. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
23 be severe, in that the distress has manifested itself physical symptoms that include, but

1 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
2 of emotional distress to the Defendant's alleged intentional infliction of emotional
3 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
4 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms
5 including staring into space while reliving the incident, muscle tightness and back
6 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
7 manifestations of emotional distress due to the Defendant's alleged intentional infliction
8 of emotional distress: intense headaches, depression, stomach upset and nausea,
9 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
10 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
11 sometimes forming open sores on his scalp and face.

12 3396. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
13 specialized PTSD therapist to process and heal from the emotional distress foisted
14 upon them.

15 3397. Upon information and belief, each of the listed Defendants in this claim, St.
16 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia
17 Shultz, MD were in a position of actual or apparent authority over the Plaintiffs Mr. and
18 Mrs. Smith and Newborn baby J.A.S., and each Defendant had the power to affect the
19 interest of the Smith Family to remain intact.

20 3398. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino,
21 MD, and Ms. Cynthia Shultz, MD's conduct violated Plaintiffs' rights under Pennsylvania
22 common law intentional infliction of emotional distress.

1 3399. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that each of the listed Defendants conspired with at least one other Defendant
3 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
4 Plaintiffs.

5 3400. The conspiracy between the Defendant parties and their agents, employees,
6 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
7 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

8 3401. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
9 evidence that the Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA,
10 supervised Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD in connection with this
11 allegation and are therefore liable under a legal theory of respondeat superior.

12 3402. Accordingly, and in connection with the alleged intentional infliction of emotional
13 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
14 Entities be required to adopt a third-party training program which demonstrates
15 appropriate circumstances under which a child should be reasonably separated from its
16 natural parents, and the specific legal procedures to adhere to for such a separation to
17 take place, including.

18 3403. Accordingly, and in connection with the alleged intentional infliction of emotional
19 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
20 Persons be required to attend and pass a rigorous a third-party training program which
21 demonstrates appropriate circumstances under which a child should be reasonably
22 separated from its natural parents, and the specific legal procedures to adhere to for
23 such a separation to take place, including.

1 3404. Accordingly, if a third-party cannot be found to render the appropriately rigorous
2 training course, then the Defendant Entities should create their own legal training
3 program which demonstrates appropriate circumstances under which a child should be
4 reasonably separated from its natural parents, and the specific legal procedures to
5 adhere to for such a separation to take place, including; and, before the created
6 program is implemented, the program must be approved by an appropriate court or
7 federal agency for review; and, the program must be implemented within 180 days of
8 the valid judgment of this honorable Court.

9 3405. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
10 conduct, including but not limited to, emotional and psychological distress, pain and
11 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
12 appropriate compensatory damages to account for PTSD therapies and other related
13 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
14 request an amount of \$84,800 in compensatory damages per Defendant.

15 3406. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
16 Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD and
17 therefore, their ability to afford the appropriate training to avoid this egregious violation
18 of the Pennsylvania Common Law, and, since harm was actually caused to the current
19 Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum
20 families, and because the acts of the Defendants and their agents, assigns, or
21 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
22 the Plaintiffs respectfully request the imposition of punitive damages on Defendants St.
23 Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia

Shultz, MD to deter such Defendants from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms. Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.

3407. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

L. Intentional Infliction of Emotional Distress XI

Mr. & Mrs. Smith v. St. Luke's Hospital & Hospital Social Worker "Vanessa"

3408. To plead an intentional infliction of emotional distress claim under Pennsylvania law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2) was extreme and outrageous; (3) actually caused the distress; and (4) caused distress that was severe.³⁵⁸

3409. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim has been found only where the conduct has been so outrageous in character, and so

³⁵⁸*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

1 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
2 as atrocious, and utterly intolerable in a civilized community."³⁵⁹

3 3410. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
4 must allege that [they] suffered "severe" emotional distress resulting from the
5 Defendant's conduct.³⁶⁰

6 3411. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
7 disappointment, worry and nausea" all indicate "severe" emotional distress[,]"³⁶¹ as well
8 as, "fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
9 [and] mental anguish also indicate "severe emotional distress."³⁶²

10 3412. "The extreme and outrageous character of conduct may arise from an abuse by a
11 person in a position of actual or apparent authority over another, or by one with the
12 power to affect the other's interests." ³⁶³

13 3413. IIED (1): The Defendants St. Luke's Hospital and Hospital Social Worker
14 "Vanessa's" actions were intentional and/or reckless when as agents, employees, or
15 assigns of a medical provider, gaslit the Plaintiff parents Mr. and Mrs. Smith by stating

³⁵⁹*Id*, citing, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³⁶⁰*Id* at *10-11, citing, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also*, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁶¹*Id*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³⁶²*Id*.

³⁶³ *Id* at *8.

1 to Plaintiff Mrs. Smith in Newborn baby J.A.S.'s NICU "pod" on April 11th, 2021 that
2 Mrs. Smith still had "custody" and control over the care of Newborn baby J.A.S. despite
3 the mountain of evidence and official actions to the contrary, including but not limited to
4 a male security guard stationed merely feet away from Plaintiff Mrs. Smith when the
5 statement was rendered, not to mention that the last time that Plaintiff Mrs. Smith
6 objected to care of Newborn baby J.A.S. she was ejected from Defendant St. Luke's
7 Hospital's property under threat of arrest, and medical notes in Newborn baby J.A.S.'s
8 medical records indicate if Plaintiff Mrs. Smith behaved "inappropriately" she would be
9 removed, again, from the NICU and away from Newborn baby J.A.S.

10 3414. IIED (2): The Defendants St. Luke's Hospital and Hospital Social Worker
11 "Vanessa's" actions were extreme and outrageous because as a hospital social worker
12 who is supposed to have increased sensitivity to delicate family situations, violated such
13 delicate sensibilities when her "faux" reassurances to Plaintiff Mrs. Smith flew in the
14 face of reality which were actions so outrageous in character, and so extreme in degree,
15 as to go beyond all possible bounds of decency, and to be regarded as atrocious, and
16 utterly intolerable in a civilized community.

17 3415. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
18 when Defendants St. Luke's Hospital and Hospital Social Worker "Vanessa," personally
19 spoke to Plaintiff Mrs. Smith false reassurances and then that conversation was
20 conveyed to Plaintiff Mr. Smith via a phone call immediately after Hospital Social
21 Worker "Vanessa" left the NICU pod, causing the Plaintiffs Mr. and Mrs. Smith to feel
22 grief, fear, anxiety, stress, chagrin, disappointment, worry, shame, humiliation, and,
23 embarrassment.

1 3416. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
2 be severe, in that the distress has manifested itself physical symptoms that include, but
3 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
4 of emotional distress to the Defendant's alleged intentional infliction of emotional
5 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
6 separation anxiety from newborn baby J.A.S., insomnia, depression, PTSD symptoms
7 including staring into space while reliving the incident, muscle tightness and back
8 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
9 manifestations of emotional distress due to the Defendant's alleged intentional infliction
10 of emotional distress: intense headaches, depression, stomach upset and nausea,
11 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
12 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
13 sometimes forming open sores on his scalp and face.

14 3417. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
15 specialized PTSD therapist to process and heal from the emotional distress foisted
16 upon them.

17 3418. Upon information and belief, each of the listed Defendants in this claim, St.
18 Luke's Hospital and Hospital Social Worker "Vanessa," were in a position of actual or
19 apparent authority over the Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S., and
20 each Defendant had the power to affect the interest of the Smith Family to remain intact.

21 3419. Defendants St. Luke's Hospital and Hospital Social Worker "Vanessa's" conduct
22 violated Plaintiffs' rights under Pennsylvania common law intentional infliction of
23 emotional distress.

1 3420. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
2 evidence that each of the listed Defendants conspired with at least one other Defendant
3 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
4 Plaintiffs.

5 3421. The conspiracy between the Defendant parties and their agents, employees,
6 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
7 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

8 3422. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
9 evidence that the Defendant St. Luke's Hospital supervised Hospital Social Worker
10 "Vanessa" in connection with this allegation and are therefore liable under a legal theory
11 of respondeat superior.

12 3423. Accordingly, and in connection with the alleged intentional infliction of emotional
13 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
14 Entities be required to adopt a third-party training program which demonstrates
15 appropriate circumstances under which a child should be reasonably separated from its
16 natural parents, and the specific legal procedures to adhere to for such a separation to
17 take place.

18 3424. Accordingly, and in connection with the alleged intentional infliction of emotional
19 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
20 Persons be required to attend and pass a rigorous a third-party training program which
21 demonstrates appropriate circumstances under which a child should be reasonably
22 separated from its natural parents, and the specific legal procedures to adhere to for
23 such a separation to take place.

1 3425. Accordingly, if a third-party cannot be found to render the appropriately rigorous
2 training course, then the Defendant Entities should create their own legal training
3 program which demonstrates appropriate circumstances under which a child should be
4 reasonably separated from its natural parents, and the specific legal procedures to
5 adhere to for such a separation to take place, including; and, before the created
6 program is implemented, the program must be approved by an appropriate court or
7 federal agency for review; and, the program must be implemented within 180 days of
8 the valid judgment of this honorable Court.

9 3426. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
10 conduct, including but not limited to, emotional and psychological distress, pain and
11 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
12 appropriate compensatory damages to account for PTSD therapies and other related
13 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
14 request an amount of \$84,800 in compensatory damages per Defendant.

15 3427. Given the substantial wealth of the Defendant St. Luke's Hospital, and therefore,
16 its ability to afford the appropriate training to avoid this egregious violation of the
17 Pennsylvania Common Law, and, since harm was actually caused to the current
18 Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum
19 families, and because the acts of the Defendants and their agents, assigns, or
20 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
21 the Plaintiffs respectfully request the imposition of punitive damages on Defendants St.
22 Luke's Hospital to deter such Defendant from committing to such conduct in the future
23 which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully

request an amount of \$1,000,000 in punitive damages per Defendant Hospital Social Worker “Vanessa”; and \$10,000,000 per Defendant St. Luke’s Hospital.

3428. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

LI. Intentional Infliction of Emotional Distress XII

Mr. & Mrs. Smith v. St. Luke’s Hospital, “Security Guard ‘Freddy’”, Security Guard ‘Joe’”, Security Guard ‘Nate’” “Security Supervisor ‘Unknown’”, “Head of Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman & the “Hospital Leadership Team”

3429. To plead an intentional infliction of emotional distress claim under Pennsylvania law, [Plaintiffs] must allege the Defendant’s conduct (1) was intentional or reckless; (2) was extreme and outrageous; (3) actually caused the distress; and (4) caused distress that was severe.³⁶⁴

3430. “In Pennsylvania, “[l]iability on an intentional infliction of emotional distress claim has been found only where the conduct has been so outrageous in character, and so

³⁶⁴*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

1 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
2 as atrocious, and utterly intolerable in a civilized community."³⁶⁵

3 3431. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
4 must allege that [they] suffered "severe" emotional distress resulting from the
5 Defendant's conduct.³⁶⁶

6 3432. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
7 disappointment, worry and nausea" all indicate "severe" emotional distress[,] "³⁶⁷ as well
8 as, "fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
9 [and] mental anguish also indicate "severe emotional distress."³⁶⁸

10 3433. "The extreme and outrageous character of conduct may arise from an abuse by a
11 person in a position of actual or apparent authority over another, or by one with the
12 power to affect the other's interests." ³⁶⁹

13 3434. IIED (1): The Defendants St. Luke's Hospital, "Security Guard 'Freddy'", Security
14 Guard 'Joe'", Security Guard 'Nate'" "Security Supervisor 'Unknown'", "Head of Hospital
15 Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack,

³⁶⁵*Id*, citing, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³⁶⁶*Id* at *10-11, citing, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also*, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁶⁷*Id*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³⁶⁸*Id*.

³⁶⁹ *Id* at *8.

1 Ms. Dawn Hoffman, and the “Hospital Leadership Team’s” actions were intentional
2 and/or reckless when as agents, employees, or assigns of a medical provider,
3 beginning on April 10th, 2021 placed male security guards around the clock at Newborn
4 baby J.A.S.’s NICU pod, even while Plaintiff Mrs. Smith was breastfeeding Newborn
5 baby J.A.S.

6 3435. IIED (2): The Defendants St. Luke’s Hospital, “Security Guard ‘Freddy’”, Security
7 Guard ‘Joe’”, Security Guard ‘Nate’” “Security Supervisor ‘Unknown’”, “Head of Hospital
8 Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack,
9 Ms. Dawn Hoffman, and the “Hospital Leadership Team’s” actions were extreme and
10 outrageous because not placing individuals identifying as female to “guard” Newborn
11 baby J.A.S.’s NICU pod was obviously going to cause indignity and humiliation to a
12 breastfeeding mother—such actions are so outrageous in character, and so extreme in
13 degree, as to go beyond all possible bounds of decency, and to be regarded as
14 atrocious, and utterly intolerable in a civilized community.

15 3436. IIED (3): The Defendants actions actually caused the distress to the Plaintiffs
16 when Defendants St. Luke’s Hospital, “Security Guard ‘Freddy’”, Security Guard ‘Joe’”,
17 Security Guard ‘Nate’” “Security Supervisor ‘Unknown’”, “Head of Hospital Security
18 ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
19 Dawn Hoffman, and the “Hospital Leadership Team” either ordered or were present as
20 security guards outside of Newborn baby J.A.S.’s NICU pod, causing the Plaintiffs Mr.
21 and Mrs. Smith to feel grief, fear, anxiety, stress, chagrin, disappointment, worry,
22 shame, humiliation, and, embarrassment.

1 3437. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
2 be severe, in that the distress has manifested itself physical symptoms that include, but
3 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
4 of emotional distress to the Defendant's alleged intentional infliction of emotional
5 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
6 separation anxiety from newborn baby J.A.S., insomnia, depression, PTSD symptoms
7 including staring into space while reliving the incident, muscle tightness and back
8 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
9 manifestations of emotional distress due to the Defendant's alleged intentional infliction
10 of emotional distress: intense headaches, depression, stomach upset and nausea,
11 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
12 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
13 sometimes forming open sores on his scalp and face.

14 3438. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
15 specialized PTSD therapist to process and heal from the emotional distress foisted
16 upon them.

17 3439. Upon information and belief, each of the listed Defendants in this claim, St.
18 Luke's Hospital, "Security Guard 'Freddy'", Security Guard 'Joe'", Security Guard 'Nate'"
19 "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve
20 Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the
21 "Hospital Leadership Team" were in a position of actual or apparent authority over the
22 Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S., and each Defendant had the
23 power to affect the interest of the Smith Family to remain intact.

1 3440. Defendants St. Luke's Hospital, "Security Guard 'Freddy'", Security Guard 'Joe'",
2 Security Guard 'Nate'" "Security Supervisor 'Unknown'", "Head of Hospital Security
3 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
4 Dawn Hoffman, and the "Hospital Leadership Team's" conduct violated Plaintiffs' rights
5 under Pennsylvania common law intentional infliction of emotional distress.

6 3441. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
7 evidence that each of the listed Defendants conspired with at least one other Defendant
8 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
9 Plaintiffs.

10 3442. The conspiracy between the Defendant parties and their agents, employees,
11 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
12 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

13 3443. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
14 evidence that the Defendant St. Luke's Hospital supervised "Security Guard 'Freddy'",
15 Security Guard 'Joe'", Security Guard 'Nate'" "Security Supervisor 'Unknown'", "Head of
16 Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
17 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" in connection with
18 this allegation and is therefore liable under a legal theory of respondeat superior.

19 3444. Accordingly, and in connection with the alleged intentional infliction of emotional
20 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
21 Entities be required to adopt a third-party training program which demonstrates
22 appropriate circumstances under which a child should be reasonably separated from its

1 natural parents, and the specific legal procedures to adhere to for such a separation to
2 take place.

3 3445. Accordingly, and in connection with the alleged intentional infliction of emotional
4 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
5 Persons be required to attend and pass a rigorous a third-party training program which
6 demonstrates appropriate circumstances under which a child should be reasonably
7 separated from its natural parents, and the specific legal procedures to adhere to for
8 such a separation to take place.

9 3446. Accordingly, if a third-party cannot be found to render the appropriately rigorous
10 training course, then the Defendant Entities should create their own legal training
11 program which demonstrates appropriate circumstances under which a child should be
12 reasonably separated from its natural parents, and the specific legal procedures to
13 adhere to for such a separation to take place, including; and, before the created
14 program is implemented, the program must be approved by an appropriate court or
15 federal agency for review; and, the program must be implemented within 180 days of
16 the valid judgment of this honorable Court.

17 3447. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
18 conduct, including but not limited to, emotional and psychological distress, pain and
19 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
20 appropriate compensatory damages to account for PTSD therapies and other related
21 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
22 request an amount of \$84,800 in compensatory damages per Defendant.

3448. Given the substantial wealth of the Defendant St. Luke's Hospital, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" and therefore, their ability to afford the appropriate training to avoid this egregious violation of the Pennsylvania Common Law, and, since harm was actually caused to the current Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum families, and because the acts of the Defendants and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request the imposition of punitive damages on Defendants St. Luke's Hospital, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" to deter such Defendant from committing to such conduct in the future which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per Defendants "Security Guard 'Freddy'", "Security Guard 'Joe'", "Security Guard 'Nate'"; \$5,000,000 per Defendants "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"; and \$10,000,000 per Defendant St. Luke's Hospital.

3449. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith suffered any actual injury despite the deprivation of their common law rights, the Plaintiffs respectfully request a nominal judgment of \$1.00.

LII. Intentional Infliction of Emotional Distress XIII

1 Mr. & Mrs. Smith v. St. Luke's Hospital

2 3450. To plead an intentional infliction of emotional distress claim under Pennsylvania
 3 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
 4 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
 5 that was severe.³⁷⁰

6 3451. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
 7 has been found only where the conduct has been so outrageous in character, and so
 8 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
 9 as atrocious, and utterly intolerable in a civilized community.'"³⁷¹

10 3452. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
 11 must allege that [they] suffered "severe" emotional distress resulting from the
 12 Defendant's conduct.³⁷²

³⁷⁰*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³⁷¹*Id.*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³⁷²*Id.* at *10-11, *citing*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also*, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

1 3453. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
2 disappointment, worry and nausea" all indicate "severe" emotional distress[,]”³⁷³ as well
3 as, “fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
4 [and] mental anguish also indicate “severe emotional distress.”³⁷⁴

5 3454. "The extreme and outrageous character of conduct may arise from an abuse by a
6 person in a position of actual or apparent authority over another, or by one with the
7 power to affect the other's interests." ³⁷⁵

8 3455. IIED (1): The Defendant St. Luke’s Hospital’s actions were intentional and/or
9 reckless when Defendant St. Luke’s Hospital did not provide reasonable
10 accommodations for comfort for postpartum Plaintiff Mrs. Smith while in Newborn baby
11 J.A.S.’s NICU pod, especially considering that Plaintiff Mrs. Smith has an obvious pre-
12 existing knee injury and difficulty walking without a brace, which was worn a great deal
13 of the time Plaintiff Mrs. Smith was staying at Defendant St. Luke’s Hospital.

14 3456. IIED (2): The Defendant St. Luke’s Hospital’s actions were extreme and
15 outrageous because not providing reasonable accommodations for a postpartum
16 mother, in a NICU pod, with a walking disability, are actions so outrageous in character,
17 and so extreme in degree, as to go beyond all possible bounds of decency, and to be
18 regarded as atrocious, and utterly intolerable in a civilized community.

³⁷³*Id.*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³⁷⁴*Id.*

³⁷⁵ *Id.* at *8.

1 3457. IIED (3): The Defendants actions actually caused the distress to the Plaintiffs
2 when Defendant St. Luke's Hospital's did not provide any accommodations for sleep,
3 comfort, or privacy while Mrs. Smith remained in the NICU for days without family
4 support, causing the Plaintiffs Mr. and Mrs. Smith to feel grief, fear, anxiety, stress,
5 chagrin, disappointment, worry, shame, humiliation, and, embarrassment.

6 3458. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
7 be severe, in that the distress has manifested itself physical symptoms that include, but
8 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
9 of emotional distress to the Defendant's alleged intentional infliction of emotional
10 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
11 separation anxiety from newborn baby J.A.S., insomnia, depression, PTSD symptoms
12 including staring into space while reliving the incident, muscle tightness and back
13 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
14 manifestations of emotional distress due to the Defendant's alleged intentional infliction
15 of emotional distress: intense headaches, depression, stomach upset and nausea,
16 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
17 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
18 sometimes forming open sores on his scalp and face.

19 3459. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
20 specialized PTSD therapist to process and heal from the emotional distress foisted
21 upon them.

22 3460. Upon information and belief, Defendant St. Luke's Hospital was in a position of
23 actual or apparent authority over the Plaintiffs Mr. and Mrs. Smith and Newborn baby

1 J.A.S., and Defendant St. Luke's Hospital had the power to affect the interest of the
2 Smith Family to remain intact.

3 3461. Defendant St. Luke's Hospital's conduct violated Plaintiffs' rights under
4 Pennsylvania common law intentional infliction of emotional distress.

5 3462. Accordingly, and in connection with the alleged intentional infliction of emotional
6 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
7 Entities be required to adopt a third-party training program which demonstrates
8 appropriate circumstances under which a child should be reasonably separated from its
9 natural parents, and the specific legal procedures to adhere to for such a separation to
10 take place, including.

11 3463. Accordingly, if a third-party cannot be found to render the appropriately rigorous
12 training course, then the Defendant Entities should create their own legal training
13 program which demonstrates appropriate circumstances under which a child should be
14 reasonably separated from its natural parents, and the specific legal procedures to
15 adhere to for such a separation to take place, including; and, before the created
16 program is implemented, the program must be approved by an appropriate court or
17 federal agency for review; and, the program must be implemented within 180 days of
18 the valid judgment of this honorable Court.

19 3464. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendant's
20 conduct, including but not limited to, emotional and psychological distress, pain and
21 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
22 appropriate compensatory damages to account for PTSD therapies and other related

1 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
2 request an amount of \$84,800 in compensatory damages per Defendant.
3 3465. Given the substantial wealth of the Defendant St. Luke's Hospital, and therefore,
4 its ability to afford the appropriate training to avoid this egregious violation of the
5 Pennsylvania Common Law, and, since harm was actually caused to the current
6 Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum
7 families, and because the acts of the Defendants and their agents, assigns, or
8 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
9 the Plaintiffs respectfully request the imposition of punitive damages on Defendant St.
10 Luke's Hospital to deter such Defendant from committing to such conduct in the future
11 which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully
12 request an amount of \$10,000,000 in punitive damages per Defendant St. Luke's
13 Hospital.

14 3466. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
15 suffered any actual injury despite the deprivation of their common law rights, the
16 Plaintiffs respectfully request a nominal judgment of \$1.00.

17 **LIII. Intentional Infliction of Emotional Distress XIV**

18 Mr. & Mrs. Smith v. Monroe County, Ms. Adelaide W. Grace, Mr. Tim Shaw & Mr.

19 Jorge Manteria

20 3467. To plead an intentional infliction of emotional distress claim under Pennsylvania
21 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)

1 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
2 that was severe.³⁷⁶

3 3468. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
4 has been found only where the conduct has been so outrageous in character, and so
5 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
6 as atrocious, and utterly intolerable in a civilized community.'"³⁷⁷

7 3469. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
8 must allege that [they] suffered "severe" emotional distress resulting from the
9 Defendant's conduct.³⁷⁸

10 3470. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
11 disappointment, worry and nausea" all indicate "severe" emotional distress[.]"³⁷⁹ as well

³⁷⁶*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³⁷⁷*Id.*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³⁷⁸*Id.* at *10-11, *citing*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also*, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁷⁹*Id.*, *quoting*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

1 as, “fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
2 [and] mental anguish also indicate “severe emotional distress.”³⁸⁰

3 3471. “The extreme and outrageous character of conduct may arise from an abuse by a
4 person in a position of actual or apparent authority over another, or by one with the
5 power to affect the other's interests.” ³⁸¹

6 3472. IIED (1): Defendants Monroe County through its Offices of Children and Youth
7 Services, and its agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim Shaw,
8 and Mr. Jorge Manteria’s actions were intentional and/or reckless when as agents,
9 employees, or assigns of the state invaded the privacy of the innocent Smith Family,
10 when without a court order or reasonable suspicion of abuse, and, while actively
11 rejecting and repudiating all exculpatory evidence, did investigate, invade, and
12 negatively pervade the Smith Family Unit with unnecessary and unfounded accusations
13 of methamphetamine ingestion and child abuse.

14 3473. IIED (2): The Defendants Monroe County through its Offices of Children and
15 Youth Services, and its agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim
16 Shaw, and Mr. Jorge Manteria’s actions were extreme and outrageous because Mrs.
17 Smith had taken three urinary drug screens, two by St. Luke’s Hospital, and one by
18 CYS itself—none of which tested positive for methamphetamine—Newborn baby J.A.S.
19 had not ever tested positive in his urinary drug screens, nor was methamphetamine
20 detected in the umbilical cord that connected Plaintiff Mrs. Smith to in-utero baby J.A.S.;

³⁸⁰ *Id.*

³⁸¹ *Id.* at *8.

1 nor were there any signs or symptoms of methamphetamine withdrawal in either
2 Plaintiff Mrs. Smith or Newborn baby J.A.S., and still the Smith Family Unit, including
3 Plaintiffs Mr. and Mrs. Smith's three other children, were in constant fear of the Smith
4 Family Unit being separated without cause or proper procedure—and still the Smith
5 Family was investigated for over a month by Monroe County CYS, its agents,
6 employees, or assigns—such actions are so outrageous in character, and so extreme in
7 degree, as to go beyond all possible bounds of decency, and to be regarded as
8 atrocious, and utterly intolerable in a civilized community.

9 3474. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
10 when Defendants Monroe County through its Offices of Children and Youth Services,
11 and its agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim Shaw, and Mr.
12 Jorge Manteria, either ordered, consented to, or were present as investigators of the
13 Smith Family, causing the Plaintiffs Mr. and Mrs. Smith to feel grief, fear, anxiety, stress,
14 chagrin, disappointment, worry, shame, humiliation, and, embarrassment.

15 3475. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
16 be severe, in that the distress has manifested itself physical symptoms that include, but
17 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
18 of emotional distress to the Defendant's alleged intentional infliction of emotional
19 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
20 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms
21 including staring into space while reliving the incident, muscle tightness and back
22 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
23 manifestations of emotional distress due to the Defendant's alleged intentional infliction

1 of emotional distress: intense headaches, depression, stomach upset and nausea,
2 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
3 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
4 sometimes forming open sores on his scalp and face.

5 3476. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
6 specialized PTSD therapist to process and heal from the emotional distress foisted
7 upon them.

8 3477. Upon information and belief, each of the listed Defendants in this claim,
9 Defendants Monroe County through its Offices of Children and Youth Services, and its
10 agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim Shaw, and Mr. Jorge
11 Manteria, were in a position of actual or apparent authority over the Plaintiffs Mr. and
12 Mrs. Smith and Newborn baby J.A.S., and each Defendant had the power to affect the
13 interest of the Smith Family to remain intact.

14 3478. Defendants Monroe County through its Offices of Children and Youth Services,
15 and its agents, employees, or assigns, Ms. Adelaide W. Grace, Mr. Tim Shaw, and Mr.
16 Jorge Manteria conduct violated Plaintiffs' rights under Pennsylvania common law
17 intentional infliction of emotional distress.

18 3479. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
19 evidence that the Defendant Monroe County supervised Ms. Adelaide W. Grace, Mr.
20 Tim Shaw, and Mr. Jorge Manteria in connection with this allegation and is therefore
21 liable under a legal theory of respondeat superior.

22 3480. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
23 evidence that the Defendant Adelaide W. Grace Mr. Tim Shaw, and Mr. Jorge Manteria

1 in connection with this allegation and is therefore liable under a legal theory of
2 respondeat superior.

3 3481. Accordingly, and in connection with the alleged intentional infliction of emotional
4 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
5 Entities be required to adopt a third-party training program which demonstrates
6 appropriate circumstances under which a child should be reasonably separated from its
7 natural parents, and the specific legal procedures to adhere to for such a separation to
8 take place.

9 3482. Accordingly, and in connection with the alleged intentional infliction of emotional
10 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
11 Persons be required to attend and pass a rigorous a third-party training program which
12 demonstrates appropriate circumstances under which a child should be reasonably
13 separated from its natural parents, and the specific legal procedures to adhere to for
14 such a separation to take place.

15 3483. Accordingly, if a third-party cannot be found to render the appropriately rigorous
16 training course, then the Defendant Entities should create their own legal training
17 program which demonstrates appropriate circumstances under which a child should be
18 reasonably separated from its natural parents, and the specific legal procedures to
19 adhere to for such a separation to take place, including; and, before the created
20 program is implemented, the program must be approved by an appropriate court or
21 federal agency for review; and, the program must be implemented within 180 days of
22 the valid judgment of this honorable Court.

1 3484. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendants'
2 conduct, including but not limited to, emotional and psychological distress, pain and
3 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
4 appropriate compensatory damages to account for PTSD therapies and other related
5 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
6 request an amount of \$84,800 in compensatory damages per Defendant.

7 3485. Defendant Monroe County through its Office of Children and Youth Services, is
8 legally obligated to appropriately train its state actor employees to avoid this egregious
9 violation of Pennsylvania common laws, and since harm was actually caused to the
10 current Plaintiff Smith Family, and since harm is likely to continue to harm future fathers,
11 and because the acts of the Defendants and their agents, assigns, or employees
12 callously disregarded the Plaintiff's rights in a reckless and wanton manner, the Plaintiff
13 respectfully requests the imposition of punitive damages on Defendants Monroe
14 County, Ms. Adelaide W. Grace, and Mr. Tim Shaw to deter such Defendants from
15 committing such conduct in the future which violates the Pennsylvania Common Law
16 Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per
17 Defendants Mr. Tim Shaw, and Mr. Jorge Manteria; \$5,000,000 per Defendants Ms.
18 Adelaide W. Grace; and \$10,000,000 per Defendant Monroe County.

19 3486. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
20 any actual injury despite the deprivation of their common law rights, the Plaintiffs
21 respectfully request a nominal judgment of \$1.00.

22 **LIV. Intentional Infliction of Emotional Distress XV**

1 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians
 2 Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and
 3 Gynecology Associates, Monroe County, Northampton County, Ms. Adelaide
 4 Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
 5 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms.
 6 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe,
 7 MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello,
 8 DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates,
 9 CRNP, Ms. Kimberly A. Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of
 10 Hospital Security 'Unknown', Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
 11 Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team"

12 3487. To plead an intentional infliction of emotional distress claim under Pennsylvania
 13 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
 14 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
 15 that was severe.³⁸²

16 3488. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
 17 has been found only where the conduct has been so outrageous in character, and so

³⁸²*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul.
 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D.
 Pa. 1999).

1 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
2 as atrocious, and utterly intolerable in a civilized community."383

3 3489. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
4 must allege that [they] suffered "severe" emotional distress resulting from the
5 Defendant's conduct.384

6 3490. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
7 disappointment, worry and nausea" all indicate "severe" emotional distress[,]385 as well
8 as, "fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
9 [and] mental anguish also indicate "severe emotional distress."386

10 3491. "The extreme and outrageous character of conduct may arise from an abuse by a
11 person in a position of actual or apparent authority over another, or by one with the
12 power to affect the other's interests." 387

13 3492. IIED (1): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
14 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics

³⁸³*Id*, citing, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³⁸⁴*Id* at *10-11, citing, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); See also, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁸⁵*Id*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³⁸⁶*Id*.

³⁸⁷*Id* at *8.

1 and Gynecology Associates, Monroe County, Northampton County, Ms. Adelaide
2 Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick
3 Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
4 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
5 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
6 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
7 Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
8 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
9 and the "Hospital Leadership Team's" actions were intentional and/or reckless when as
10 agents, employees, or assigns of a medical provider, Defendants did not ever advocate
11 of behalf of Plaintiffs Mr. and Mrs. Smith, and no reasonable advocate was provided for
12 them before they were separated from their newborn baby, and instead Defendants
13 tailored their actions towards a narrative that Plaintiff Mrs. Smith ingested
14 methamphetamine and that the deleterious effects of methamphetamine ingestion were
15 passed on to Newborn baby J.A.S., and that Plaintiff Mr. Smith was too violent to be
16 present on Defendant St. Luke's Hospital property; this overall narrative, allegedly
17 supported by Defendants was designed to separate Plaintiffs Mr. and Mrs. Smith from
18 Plaintiff Newborn baby J.A.S.

19 3493. IIED (2): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
20 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
21 and Gynecology Associates, Monroe County, Northampton County, Ms. Adelaide
22 Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick
23 Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn

1 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
 2 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
 3 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
 4 Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
 5 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
 6 and the "Hospital Leadership Team's" actions were extreme and outrageous because to
 7 physically separate a newborn child in a NICU from its parents without any signs of past
 8 or imminent harm to the newborn child due to its parents are actions which were so
 9 outrageous in character, and so extreme in degree, as to go beyond all possible bounds
 10 of decency, and to be regarded as atrocious, and utterly intolerable in a civilized
 11 community.

12 3494. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
 13 when Plaintiffs Mr. and Mrs. Smith were removed against their will and consent from
 14 Defendant St. Luke's Hospital property under threat of arrest, because of Defendants
 15 St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group,
 16 Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology
 17 Associates, Monroe County, Northampton County, Ms. Adelaide Grace, Mr. Tim Shaw,
 18 Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne
 19 R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
 20 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown,
 21 MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler,
 22 DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, "Security Supervisor
 23 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert

1 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership
2 Team’s” false narrative regarding Plaintiff Mrs. Smith’s alleged methamphetamine
3 ingestion despite no actual or imminent harm coming to Plaintiff Newborn baby J.A.S.
4 via his parents, causing the Plaintiffs Mr. and Mrs. Smith to feel grief, fear, anxiety,
5 stress, chagrin, disappointment, worry, shame, humiliation, and, embarrassment.

6 3495. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
7 be severe, in that the distress has manifested itself physical symptoms that include, but
8 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
9 of emotional distress to the Defendant’s alleged intentional infliction of emotional
10 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
11 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms
12 including staring into space while reliving the incident, muscle tightness and back
13 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
14 manifestations of emotional distress due to the Defendant’s alleged intentional infliction
15 of emotional distress: intense headaches, depression, stomach upset and nausea,
16 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
17 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
18 sometimes forming open sores on his scalp and face.

19 3496. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
20 specialized PTSD therapist to process and heal from the emotional distress foisted
21 upon them.

22 3497. Upon information and belief, each of the listed Defendants in this claim, St.

23 Luke’s Hospital, Onsite Neonatal, OBHG PA, St. Luke’s Physicians Group, Bethlehem

Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Monroe County, Northampton County, Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership Team" were in a position of actual or apparent authority over the Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S., and each Defendant had the power to affect the interest of the Smith Family to remain intact.

3498. Defendants , St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Monroe County, Northampton County, Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the

1 “Hospital Leadership Team’s” conduct violated Plaintiffs’ rights under Pennsylvania
2 common law intentional infliction of emotional distress.

3 3499. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
4 evidence that each of the listed Defendants conspired with at least one other Defendant
5 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
6 Plaintiffs.

7 3500. The conspiracy between the Defendant parties and their agents, employees,
8 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
9 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

10 3501. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
11 evidence that the Defendant St. Luke’s Hospital supervised “Security Guard ‘Freddy’”,
12 Security Guard ‘Joe’”, Security Guard ‘Nate’” “Security Supervisor ‘Unknown’”, “Head of
13 Hospital Security ‘Unknown’”, Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms.
14 Darla Frack, Ms. Dawn Hoffman, and the “Hospital Leadership Team” in connection with
15 this allegation and is therefore liable under a legal theory of respondeat superior.

16 3502. Accordingly, and in connection with the alleged intentional infliction of emotional
17 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
18 Entities be required to adopt a third-party training program which demonstrates
19 appropriate circumstances under which a child should be reasonably separated from its
20 natural parents, and the specific legal procedures to adhere to for such a separation to
21 take place.

22 3503. Accordingly, and in connection with the alleged intentional infliction of emotional
23 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant

1 Persons be required to attend and pass a rigorous a third-party training program which
2 demonstrates appropriate circumstances under which a child should be reasonably
3 separated from its natural parents, and the specific legal procedures to adhere to for
4 such a separation to take place.

5 3504. Accordingly, if a third-party cannot be found to render the appropriately rigorous
6 training course, then the Defendant Entities should create their own legal training
7 program which demonstrates appropriate circumstances under which a child should be
8 reasonably separated from its natural parents, and the specific legal procedures to
9 adhere to for such a separation to take place, including; and, before the created
10 program is implemented, the program must be approved by an appropriate court or
11 federal agency for review; and, the program must be implemented within 180 days of
12 the valid judgment of this honorable Court.

13 3505. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendant's
14 conduct, including but not limited to, emotional and psychological distress, pain and
15 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
16 appropriate compensatory damages to account for PTSD therapies and other related
17 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
18 request an amount of \$84,800 in compensatory damages per Defendant.

19 3506. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
20 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates
21 Group, St. Luke's Obstetrics and Gynecology Associates, Monroe County, Northampton
22 County, Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia
23 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD,

1 Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD,
2 Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr.
3 Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms.
4 Kimberly A. Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security
5 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms.
6 Dawn Hoffman, and the "Hospital Leadership Team", and therefore, their ability to afford
7 the appropriate training to avoid this egregious violation of the Pennsylvania Common
8 Law, and, since harm was actually caused to the current Plaintiff Smith Family, and
9 since harm is likely to continue to harm future postpartum families, and because the
10 acts of the Defendants and their agents, assigns, or employees callously disregarded
11 the Plaintiff's rights in a reckless and wanton manner, the Plaintiffs respectfully request
12 the imposition of punitive damages on Defendant St. Luke's Hospital, Onsite Neonatal,
13 OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group, St.
14 Luke's Obstetrics and Gynecology Associates, Monroe County, Northampton County,
15 Ms. Adelaide Grace, Mr. Tim Shaw, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD,
16 Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
17 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
18 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
19 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
20 Nardis, CRNP, "Security Supervisor 'Unknown'", "Head of Hospital Security 'Unknown'",
21 Mr. Steve Lanshe, Esq., Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman,
22 and the "Hospital Leadership Team" to deter such Defendant from committing to such
23 conduct in the future which violates Commonwealth of Pennsylvania Common Law

1 Plaintiffs respectfully request an amount of \$1,000,000 in punitive damages per
 2 Defendants Mr. Tim Shaw, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms.
 3 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms.
 4 Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert
 5 I. Santiago, MD, Ms. Patricia Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP;
 6 \$5,000,000 per Defendants St. Luke's Physicians Group, Bethlehem Neonatal
 7 Associates Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Adelaide
 8 Grace, Mr. Patrick Philpot, DO, Ms. Chaminie Wheeler, DO, "Security Supervisor
 9 'Unknown'", "Head of Hospital Security 'Unknown'", Mr. Steve Lanshe, Esq., Mr. Robert
 10 L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, and the "Hospital Leadership
 11 Team"; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG
 12 PA, Monroe County, Northampton County, Ms. Teresa Marlino, MD, and Ms. Cynthia
 13 Shultz, MD.

14 3507. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 15 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 16 respectfully request a nominal judgment of \$1.00.

17 **LV. Intentional Infliction of Emotional Distress XVI**

18 Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians
 19 Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and
 20 Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
 21 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms.
 22 Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe,

1 MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello,
 2 DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates,
 3 CRNP, Ms. Kimberly A. Nardis, CRNP, & Mr. Jerry Hric, MD

4 3508. To plead an intentional infliction of emotional distress claim under Pennsylvania
 5 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
 6 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
 7 that was severe.³⁸⁸

8 3509. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
 9 has been found only where the conduct has been so outrageous in character, and so
 10 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
 11 as atrocious, and utterly intolerable in a civilized community.'"³⁸⁹

³⁸⁸*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

³⁸⁹*Id.*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

1 3510. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
 2 must allege that [they] suffered "severe" emotional distress resulting from the
 3 Defendant's conduct.³⁹⁰

4 3511. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
 5 disappointment, worry and nausea" all indicate "severe" emotional distress[,]”³⁹¹ as well
 6 as, “fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
 7 [and] mental anguish also indicate “severe emotional distress.”³⁹²

8 3512. "The extreme and outrageous character of conduct may arise from an abuse by a
 9 person in a position of actual or apparent authority over another, or by one with the
 10 power to affect the other's interests." ³⁹³

11 3513. IIED (1): The Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, St.
 12 Luke’s Physicians Group, Bethlehem Neonatal Associates Group, St. Luke’s Obstetrics
 13 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
 14 Patrick Philpot, DO, Ms. DianneR. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
 15 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
 16 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.

³⁹⁰*Id at *10-11, citing, Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also, Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁹¹*Id, quoting, Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³⁹²*Id.*

³⁹³ *Id at *8.*

1 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
2 Nardis, CRNP, & Mr. Jerry Hric, MD's actions were intentional and/or reckless when as
3 agents, employees, or assigns of a medical provider, constantly asked for consent for
4 medical treatments for Plaintiff Newborn baby J.A.S., and when consent was not given,
5 Mr. and Mrs. Smith were ignored actively, and medical procedures and medications
6 were administered to Plaintiff Newborn baby J.A.S. against the will, consent, and at
7 times, even knowledge of Plaintiffs Mr. and Mrs. Smith.

8 3514. IIED (2): The Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
9 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
10 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
11 Patrick Philpot, DO, Ms. DianneR. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
12 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
13 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
14 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
15 Nardis, CRNP, and Mr. Jerry Hric, MD's actions were extreme and outrageous because
16 to ignore the reasonable will and consent of parents for a newborn baby, and to do
17 whatever the medical provider and its representatives desire, including injecting copious
18 amounts of unnecessary antibiotics into Plaintiff Newborn baby J.A.S. are actions which
19 were so outrageous in character, and so extreme in degree, as to go beyond all
20 possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in
21 a civilized community.

22 3515. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
23 when Plaintiffs Mr. and Mrs. Smith were ignored time and again as to their opinions

1 concerning their newborn baby because Defendants St. Luke's Hospital, Onsite
2 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates
3 Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlinio, MD, Ms.
4 Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N.
5 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
6 Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A.
7 Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia
8 Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, and Mr. Jerry Hric, MD, were conforming
9 to a narrative that Mr. and Mrs. Smith were not reasonable and capable decision
10 makers, causing the Plaintiffs Mr. and Mrs. Smith to feel grief, fear, anxiety, stress,
11 chagrin, disappointment, worry, shame, humiliation, and, embarrassment.

12 3516. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
13 be severe, in that the distress has manifested itself physical symptoms that include, but
14 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
15 of emotional distress to the Defendant's alleged intentional infliction of emotional
16 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
17 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms
18 including staring into space while reliving the incident, muscle tightness and back
19 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
20 manifestations of emotional distress due to the Defendant's alleged intentional infliction
21 of emotional distress: intense headaches, depression, stomach upset and nausea,
22 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving

1 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
2 sometimes forming open sores on his scalp and face.

3 3517. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
4 specialized PTSD therapist to process and heal from the emotional distress foisted
5 upon them.

6 3518. Upon information and belief, each of the listed Defendants in this claim, St.
7 Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
8 Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Ms.
9 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
10 Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
11 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown,
12 MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler,
13 DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, and Mr. Jerry Hric, MD,
14 were in a position of actual or apparent authority over the Plaintiffs Mr. and Mrs. Smith
15 and Plaintiff Newborn baby J.A.S., and each Defendant had the power to affect the
16 interest of the Smith Family to remain intact.

17 3519. Defendants , St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
18 Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and
19 Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick
20 Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
21 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
22 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
23 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.

1 Nardis, CRNP, and Mr. Jerry Hric, MD's conduct violated Plaintiffs' rights under
2 Pennsylvania common law intentional infliction of emotional distress.

3 3520. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
4 evidence that each of the listed Defendants conspired with at least one other Defendant
5 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
6 Plaintiffs.

7 3521. The conspiracy between the Defendant parties and their agents, employees,
8 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
9 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

10 3522. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
11 evidence that the Defendants , St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
12 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
13 and Gynecology Associates, and Mr. Jerry Hric, MD supervised Ms. Teresa Marlino,
14 MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr.
15 Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms.
16 Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly
17 A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia
18 Bates, CRNP, and Ms. Kimberly A. Nardis, CRNP in connection with this allegation and
19 is therefore liable under a legal theory of respondeat superior.

20 3523. Accordingly, and in connection with the alleged intentional infliction of emotional
21 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
22 Entities be required to adopt a third-party training program which demonstrates
23 appropriate circumstances under which a child should be reasonably separated from its

1 natural parents, and the specific legal procedures to adhere to for such a separation to
2 take place.

3 3524. Accordingly, and in connection with the alleged intentional infliction of emotional
4 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
5 Persons be required to attend and pass a rigorous a third-party training program which
6 demonstrates appropriate circumstances under which a child should be reasonably
7 separated from its natural parents, and the specific legal procedures to adhere to for
8 such a separation to take place.

9 3525. Accordingly, if a third-party cannot be found to render the appropriately rigorous
10 training course, then the Defendant Entities should create their own legal training
11 program which demonstrates appropriate circumstances under which a child should be
12 reasonably separated from its natural parents, and the specific legal procedures to
13 adhere to for such a separation to take place, including; and, before the created
14 program is implemented, the program must be approved by an appropriate court or
15 federal agency for review; and, the program must be implemented within 180 days of
16 the valid judgment of this honorable Court.

17 3526. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendant's
18 conduct, including but not limited to, emotional and psychological distress, pain and
19 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
20 appropriate compensatory damages to account for PTSD therapies and other related
21 treatments as they have been and will continue to be necessary Plaintiffs respectfully
22 request an amount of \$84,800 in compensatory damages per Defendant.

1 3527. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
2 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates
3 Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms.
4 Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N.
5 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
6 Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A.
7 Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia
8 Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, and Mr. Jerry Hric, MD, and therefore,
9 their ability to afford the appropriate training to avoid this egregious violation of the
10 Pennsylvania Common Law, and, since harm was actually caused to the current
11 Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum
12 families, and because the acts of the Defendants and their agents, assigns, or
13 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
14 the Plaintiffs respectfully request the imposition of punitive damages on Defendant St.
15 Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
16 Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Ms.
17 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
18 Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
19 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown,
20 MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler,
21 DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, and Mr. Jerry Hric, MD
22 to deter such Defendant from committing to such conduct in the future which violates
23 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount

1 of \$1,000,000 in punitive damages per Defendants Ms. Cynthia Shultz, MD, Ms. Dianne
 2 R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
 3 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown,
 4 MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Patricia Bates,
 5 CRNP, and Ms. Kimberly A. Nardis, CRNP; \$5,000,000 per Defendants St. Luke's
 6 Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and
 7 Gynecology Associates, Mr. Patrick Philpot, DO, Ms. Chaminie Wheeler, DO, and Mr.
 8 Jerry Hric, MD; and \$10,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal,
 9 OBHG PA, and Ms. Teresa Marlino, MD.

10 3528. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 11 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 12 respectfully request a nominal judgment of \$1.00.

13 **LVI. Intentional Infliction of Emotional Distress XVII**

14 **Mr. & Mrs. Smith v. St. Luke's Hospital, OBHG PA, & Ms. Teresa Marlino, MD**

15 3529. To plead an intentional infliction of emotional distress claim under Pennsylvania
 16 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
 17 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
 18 that was severe.³⁹⁴

³⁹⁴*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul.
 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D.
 Pa. 1999).

1 3530. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
 2 has been found only where the conduct has been so outrageous in character, and so
 3 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
 4 as atrocious, and utterly intolerable in a civilized community.'"³⁹⁵

5 3531. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
 6 must allege that [they] suffered "severe" emotional distress resulting from the
 7 Defendant's conduct.³⁹⁶

8 3532. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
 9 disappointment, worry and nausea" all indicate "severe" emotional distress[,] "³⁹⁷ as well
 10 as, "fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
 11 [and] mental anguish also indicate "severe emotional distress."³⁹⁸

12 3533. "The extreme and outrageous character of conduct may arise from an abuse by a
 13 person in a position of actual or apparent authority over another, or by one with the
 14 power to affect the other's interests." ³⁹⁹

³⁹⁵*Id*, citing, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

³⁹⁶*Id* at *10-11, citing, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); See also, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

³⁹⁷*Id*, quoting, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

³⁹⁸*Id*.

³⁹⁹ *Id* at *8.

1 3534. IIED (1): The Defendants St. Luke's Hospital, OBHG PA, and Ms. Teresa
2 Marlino, MD's actions were intentional and/or reckless when as a agent, employee, or
3 assign of a medical provider, unequivocally accused Plaintiff Mrs. Smith of
4 methamphetamine ingestion, and that she abused her newborn baby child by passing
5 the methamphetamine on to Newborn baby J.A.S.; and Defendant Ms. Marlino, MD did
6 so without a court order or reasonable suspicion that Plaintiff Mrs. Smith had in fact
7 ingested methamphetamine.

8 3535. IIED (2): The Defendants St. Luke's Hospital, OBHG PA, Ms. Teresa Marlino,
9 MD's actions were extreme and outrageous because to ignore that neither Plaintiff Mrs.
10 Smith, nor Newborn baby J.A.S. suffered from methamphetamine withdrawal, and
11 instead to solely rely on undifferentiated urinary drug screenings which do not
12 differentiate between legally prescribed amphetamines and illegal methamphetamines
13 are actions which were so outrageous in character, and so extreme in degree, as to go
14 beyond all possible bounds of decency, and to be regarded as atrocious, and utterly
15 intolerable in a civilized community.

16 3536. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
17 when Plaintiffs Mr. and Mrs. Smith were ignored time and again as to their opinions
18 concerning Plaintiff Mrs. Smith and their newborn baby because Defendants St. Luke's
19 Hospital, OBHG PA, and Ms. Teresa Marlino, MD, callously spoke words to Plaintiffs
20 Mr. and Mrs. Smith in Plaintiff Mrs. Smith's postpartum hospital room which Defendant
21 Ms. Teresa Marlino, MD, clearly conveyed that she believed that Plaintiff Mrs. Smith
22 ingested methamphetamine, going so far as to ask Mrs. Smith if she, "Had a
23 prescription for methamphetamine?"; when Plaintiff Mrs. Smith told Defendant Ms.

1 Teresa Marlino, MD that Plaintiff Mrs. Smith had not ever consumed methamphetamine
2 but prescription Vyvanse, a known amphetamine, and a fact known to Defendant Ms.
3 Marlino, MD, actions which caused the Plaintiffs Mr. and Mrs. Smith to feel grief, fear,
4 anxiety, stress, chagrin, disappointment, worry, shame, humiliation, and,
5 embarrassment.

6 3537. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
7 be severe, in that the distress has manifested itself physical symptoms that include, but
8 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
9 of emotional distress to the Defendant's alleged intentional infliction of emotional
10 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
11 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms
12 including staring into space while reliving the incident, muscle tightness and back
13 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
14 manifestations of emotional distress due to the Defendant's alleged intentional infliction
15 of emotional distress: intense headaches, depression, stomach upset and nausea,
16 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
17 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
18 sometimes forming open sores on his scalp and face.

19 3538. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
20 specialized PTSD therapist to process and heal from the emotional distress foisted
21 upon them.

22 3539. Upon information and belief, each of the listed Defendants in this claim, St.
23 Luke's Hospital, OBHG PA, Ms. Teresa Marlino, MD, were in a position of actual or

1 apparent authority over the Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S., and
2 each Defendant had the power to affect the interest of the Smith Family to remain intact.
3 3540. Defendants St. Luke's Hospital, OBHG PA, and Ms. Teresa Marlino, MD's
4 conduct violated Plaintiffs' rights under Pennsylvania common law intentional infliction
5 of emotional distress.

6 3541. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
7 evidence that each of the listed Defendants conspired with at least one other Defendant
8 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
9 Plaintiffs.

10 3542. The conspiracy between the Defendant parties and their agents, employees,
11 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
12 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

13 3543. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
14 evidence that the Defendants, St. Luke's Hospital and OBHG PA supervised Ms.
15 Teresa Marlino, MD, in connection with this allegation and is therefore liable under a
16 legal theory of respondeat superior.

17 3544. Accordingly, and in connection with the alleged intentional infliction of emotional
18 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
19 Entities be required to adopt a third-party training program which demonstrates
20 appropriate circumstances under which a child should be reasonably separated from its
21 natural parents, and the specific legal procedures to adhere to for such a separation to
22 take place.

1 3545. Accordingly, and in connection with the alleged intentional infliction of emotional
2 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
3 Persons be required to attend and pass a rigorous a third-party training program which
4 demonstrates appropriate circumstances under which a child should be reasonably
5 separated from its natural parents, and the specific legal procedures to adhere to for
6 such a separation to take place.

7 3546. Accordingly, if a third-party cannot be found to render the appropriately rigorous
8 training course, then the Defendant Entities should create their own legal training
9 program which demonstrates appropriate circumstances under which a child should be
10 reasonably separated from its natural parents, and the specific legal procedures to
11 adhere to for such a separation to take place, including; and, before the created
12 program is implemented, the program must be approved by an appropriate court or
13 federal agency for review; and, the program must be implemented within 180 days of
14 the valid judgment of this honorable Court.

15 3547. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendant's
16 conduct, including but not limited to, emotional and psychological distress, pain and
17 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
18 appropriate compensatory damages to account for PTSD therapies and other related
19 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
20 request an amount of \$84,800 in compensatory damages per Defendant.

21 3548. Given the substantial wealth of the Defendants St. Luke's Hospital, OBHG PA,
22 and Ms. Teresa Marlino, MD, and therefore, their ability to afford the appropriate training
23 to avoid this egregious violation of the Pennsylvania Common Law, and, since harm

1 was actually caused to the current Plaintiff Smith Family, and since harm is likely to
 2 continue to harm future postpartum families, and because the acts of the Defendants
 3 and their agents, assigns, or employees callously disregarded the Plaintiff's rights in a
 4 reckless and wanton manner, the Plaintiffs respectfully request the imposition of
 5 punitive damages on Defendant St. Luke's Hospital, OBHG PA, and Ms. Teresa
 6 Marlino, MD to deter such Defendant from committing to such conduct in the future
 7 which violates Commonwealth of Pennsylvania Common Law Plaintiffs respectfully
 8 request an amount of \$10,000,000 in punitive damages per Defendants St. Luke's
 9 Hospital, OBHG PA, and Ms. Teresa Marlino, MD.

10 3549. In the unlikely event that the jury does not find that Plaintiffs Mr. & Mrs. Smith
 11 suffered any actual injury despite the deprivation of their common law rights, the
 12 Plaintiffs respectfully request a nominal judgment of \$1.00.

13 **LVII. Intentional Infliction of Emotional Distress XVIII**

14 Mr. & Mrs. Smith, et al. v. St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
 15 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's
 16 Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia
 17 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb,
 18 MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
 19 Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A.
 20 Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia
 21 Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, & Mr. Jerry Hric, MD

1 3550. To plead an intentional infliction of emotional distress claim under Pennsylvania
 2 law, [Plaintiffs] must allege the Defendant's conduct (1) was intentional or reckless; (2)
 3 was extreme and outrageous; (3) actually caused the distress; and (4) caused distress
 4 that was severe.⁴⁰⁰

5 3551. "In Pennsylvania, '[l]iability on an intentional infliction of emotional distress claim
 6 has been found only where the conduct has been so outrageous in character, and so
 7 extreme in degree, as to go beyond all possible bounds of decency, and to be regarded
 8 as atrocious, and utterly intolerable in a civilized community.'"⁴⁰¹

9 3552. To maintain [their] claim for intentional infliction of emotional distress, [Plaintiffs],
 10 must allege that [they] suffered "severe" emotional distress resulting from the
 11 Defendant's conduct.⁴⁰²

12 3553. "Fright, horror, grief, shame, humiliation, embarrassment, anger, chagrin,
 13 disappointment, worry and nausea" all indicate "severe" emotional distress[,]"⁴⁰³ as well

⁴⁰⁰*Davenport v. Pottstown Hosp. Co.*, CIVIL ACTION NO. 17-1616 at 10 (E.D. Pa. Jul. 18, 2017), *citing*, *Regan v. Township of Lower Merion*, 36 F. Supp. 2d 245, 251 (E.D. Pa. 1999).

⁴⁰¹*Id*, *citing*, *Kasper v. Cnty. of Bucks*, 514 Fed. App'x. 210, 217 (3d Cir. 2013) (internal citations and quotations omitted).

⁴⁰²*Id* at *10-11, *citing*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000); *See also*, *Corbett v. Morgenstern*, 934 F. Supp. 680, 684-85 (E.D. Pa. 1996) ([in which] symptoms of severe depression, nightmares, anxiety and ongoing mental or physical harm suffice).

⁴⁰³*Id*, *quoting*, *Lane v. Cole*, 88 F. Supp. 2d 402, 407 (E.D. Pa. 2000).

1 as, “fear, anxiety, stress, anger, headaches, nightmares, humiliation, emotional distress
2 [and] mental anguish also indicate “severe emotional distress.”⁴⁰⁴

3 3554. “The extreme and outrageous character of conduct may arise from an abuse by a
4 person in a position of actual or apparent authority over another, or by one with the
5 power to affect the other's interests.” ⁴⁰⁵

6 3555. IIED (1): The Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, St.
7 Luke’s Physicians Group, Bethlehem Neonatal Associates Group, St. Luke’s Obstetrics
8 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
9 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
10 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
11 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
12 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
13 Nardis, CRNP, and Mr. Jerry Hric, MD’s actions were intentional and/or reckless when
14 as agents, employees, or assigns of a medical provider, administered life-threatening
15 doses of antibiotics to Plaintiff Newborn baby J.A.S.

16 3556. IIED (2): The Defendants St. Luke’s Hospital, Onsite Neonatal, OBHG PA, St.
17 Luke’s Physicians Group, Bethlehem Neonatal Associates Group, St. Luke’s Obstetrics
18 and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr.
19 Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
20 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id* at *8.

1 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
2 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
3 Nardis, CRNP, and Mr. Jerry Hric, MD's actions were extreme and outrageous because
4 to feign a reason to give a newborn antibiotics, and then to proceed to give a life-
5 threatening dosage of said antibiotics to Plaintiff Newborn baby J.A.S. are actions which
6 were so outrageous in character, and so extreme in degree, as to go beyond all
7 possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in
8 a civilized community.

9 3557. IIED (3): The Defendants' actions actually caused the distress to the Plaintiffs
10 when Plaintiffs Mr. and Mrs. Smith were ignored time and again as to their opinions
11 concerning their newborn baby because Defendants St. Luke's Hospital, Onsite
12 Neonatal, OBHG, St. Luke's Physicians Group, Bethlehem Neonatal Associates Group,
13 St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia
14 Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD,
15 Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD,
16 Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr.
17 Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms.
18 Kimberly A. Nardis, CRNP, and Mr. Jerry Hric, MD, were conforming to a narrative that
19 Plaintiffs Mr. and Mrs. Smith were not reasonable and capable decision makers, leading
20 Defendants to over-medicate Plaintiff newborn baby J.A.S., which lead Plaintiff
21 Newborn baby J.A.S. to develop the condition of pyloric stenosis which almost caused
22 the death of Plaintiff Newborn baby J.A.S., and required emergency corrective surgery,

1 causing the Plaintiffs Mr. and Mrs. Smith to feel grief, fear, anxiety, stress, chagrin,
2 disappointment, worry, shame, humiliation, and, embarrassment.

3 3558. IIED (4): The stress caused to the Plaintiffs by Defendants was and continues to
4 be severe, in that the distress has manifested itself physical symptoms that include, but
5 are not limited to: Plaintiff Mrs. Smith has suffered the following physical manifestations
6 of emotional distress to the Defendant's alleged intentional infliction of emotional
7 distress: nightmares, night sweats, excessive diarrhea, anxiety and panic attacks,
8 separation anxiety from Newborn baby J.A.S., insomnia, depression, PTSD symptoms
9 including staring into space while reliving the incident, muscle tightness and back
10 spasms, and body tremors; Plaintiff Mr. Smith has suffered the following physical
11 manifestations of emotional distress due to the Defendant's alleged intentional infliction
12 of emotional distress: intense headaches, depression, stomach upset and nausea,
13 excessive acid reflux, vomiting, symptoms of PTSD including staring into space reliving
14 the incident, fatigue, insomnia, excessive sweating, loss of appetite, excessive dry skin
15 sometimes forming open sores on his scalp and face.

16 3559. Plaintiffs Mr. and Mrs. Smith require and attend regular sessions with a
17 specialized PTSD therapist to process and heal from the emotional distress foisted
18 upon them.

19 3560. Upon information and belief, each of the listed Defendants in this claim,
20 Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians
21 Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and Gynecology
22 Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO,
23 Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr.

1 Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms.
2 Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms.
3 Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, and
4 Mr. Jerry Hric, MD, were in a position of actual or apparent authority over the Plaintiffs
5 Mr. and Mrs. Smith and Plaintiff Newborn baby J.A.S., and each Defendant had the
6 power to affect the interest of the Smith Family to remain intact.

7 3561. Upon information and belief, each of the listed Defendants in this claim, St.
8 Luke's Hospital, OBHG PA, Ms. Teresa Marlino, MD, were in a position of actual or
9 apparent authority over the Plaintiffs Mr. and Mrs. Smith and Newborn baby J.A.S., and
10 each Defendant had the power to affect the interest of the Smith Family to remain intact.

11 3562. Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's
12 Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics and
13 Gynecology Associates, Ms. Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick
14 Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn
15 Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A.
16 Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I.
17 Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A.
18 Nardis, CRNP, and Mr. Jerry Hric, MD's conduct violated Plaintiffs' rights under
19 Pennsylvania common law intentional infliction of emotional distress.

20 3563. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
21 evidence that each of the listed Defendants conspired with at least one other Defendant
22 elsewhere listed in this complaint via an overt act with malice or an intent to injure the
23 Plaintiffs.

1 3564. The conspiracy between the Defendant parties and their agents, employees,
2 assigns, or other Defendants violates Pennsylvania common law against conspiracies;
3 thereby, causing actual damages to Plaintiffs Mr. & Mrs. Smith.

4 3565. Upon information and belief, Plaintiffs can demonstrate by a preponderance of
5 evidence that the Defendants, St. Luke's Hospital, Onsite Neonatal, OBHG PA, St.
6 Luke's Physicians Group, Bethlehem Neonatal Associates Group, St. Luke's Obstetrics
7 and Gynecology Associates, and Mr. Jerry Hric, MD supervised Ms. Teresa Marlino,
8 MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr.
9 Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms.
10 Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly
11 A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia
12 Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, and Mr. Jerry Hric, MD, in connection
13 with this allegation and are therefore liable under a legal theory of respondeat superior.

14 3566. Accordingly, and in connection with the alleged intentional infliction of emotional
15 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
16 Entities be required to adopt a third-party training program which demonstrates
17 appropriate circumstances under which a child should be reasonably separated from its
18 natural parents, and the specific legal procedures to adhere to for such a separation to
19 take place.

20 3567. Accordingly, and in connection with the alleged intentional infliction of emotional
21 distress of the Defendant parties, Plaintiffs Mr. and Mrs. Smith request all Defendant
22 Persons be required to attend and pass a rigorous a third-party training program which
23 demonstrates appropriate circumstances under which a child should be reasonably

1 separated from its natural parents, and the specific legal procedures to adhere to for
2 such a separation to take place.

3 3568. Accordingly, if a third-party cannot be found to render the appropriately rigorous
4 training course, then the Defendant Entities should create their own legal training
5 program which demonstrates appropriate circumstances under which a child should be
6 reasonably separated from its natural parents, and the specific legal procedures to
7 adhere to for such a separation to take place, including; and, before the created
8 program is implemented, the program must be approved by an appropriate court or
9 federal agency for review; and, the program must be implemented within 180 days of
10 the valid judgment of this honorable Court.

11 3569. Plaintiffs Mr. & Mrs. Smith suffered substantial harm as a result of Defendant's
12 conduct, including but not limited to, emotional and psychological distress, pain and
13 suffering, fear, humiliation, chagrin, and anguish; and, therefore respectfully requests
14 appropriate compensatory damages to account for PTSD therapies and other related
15 treatments as they have been and will continue to be necessary; Plaintiffs respectfully
16 request an amount of \$84,800 in compensatory damages per Defendant.

17 3570. Given the substantial wealth of the Defendants St. Luke's Hospital, Onsite
18 Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem Neonatal Associates
19 Group, St. Luke's Obstetrics and Gynecology Associates, Ms. Teresa Marlino, MD, Ms.
20 Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R. Jacobetz, Mr. Shadi N.
21 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
22 Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A.
23 Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler, DO, Ms. Patricia

1 Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, and Mr. Jerry Hric, MD, and therefore,
2 their ability to afford the appropriate training to avoid this egregious violation of the
3 Pennsylvania Common Law, and, since harm was actually caused to the current
4 Plaintiff Smith Family, and since harm is likely to continue to harm future postpartum
5 families, and because the acts of the Defendants and their agents, assigns, or
6 employees callously disregarded the Plaintiff's rights in a reckless and wanton manner,
7 the Plaintiffs respectfully request the imposition of punitive damages on Defendants St.
8 Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
9 Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Ms.
10 Teresa Marlino, MD, Ms. Cynthia Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne R.
11 Jacobetz, Mr. Shadi N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher
12 Gilbert, MD, Ms. Hannah Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown,
13 MD, Ms. Kimberly A. Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Chaminie Wheeler,
14 DO, Ms. Patricia Bates, CRNP, Ms. Kimberly A. Nardis, CRNP, and Mr. Jerry Hric, MD
15 to deter such Defendant from committing to such conduct in the future which violates
16 Commonwealth of Pennsylvania Common Law Plaintiffs respectfully request an amount
17 of \$3,000,000 in punitive damages per Defendants Ms. Dianne R. Jacobetz, Mr. Shadi
18 N. Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
19 Milthorpe, MD, Ms. Beth A. Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly A.
20 Costello, DO, Mr. Gilbert I. Santiago, MD, Ms. Patricia Bates, CRNP, and Ms. Kimberly
21 A. Nardis, CRNP; \$15,000,000 per Defendants St. Luke's Physicians Group, Bethlehem
22 Neonatal Associates Group, St. Luke's Obstetrics and Gynecology Associates, Mr.
23 Patrick Philpot, DO, Ms. Chaminie Wheeler, DO, and Mr. Jerry Hric, MD; and

1 \$30,000,000 per Defendants St. Luke's Hospital, Onsite Neonatal, OBHG PA, Ms.
 2 Teresa Marlino, MD, and Ms. Cynthia Shultz, MD.
 3 3571. In the unlikely event that the jury does not find that Plaintiff Smith Family suffered
 4 any actual injury despite the deprivation of their common law rights, the Plaintiffs
 5 respectfully request a nominal judgment of \$1.00.

6 **Requests for Damages**

7 **Policy Change Requests**

8 3572. In addition to any requested damages aforementioned listed in any particular
 9 claim, Plaintiffs respectfully request the following policy changes of the Defendants St.
 10 Luke's Hospital, Onsite Neonatal, OBHG PA, St. Luke's Physicians Group, Bethlehem
 11 Neonatal, St. Luke's Obstetrics & Gynecology Associates, Ms. Teresa Marlino, MD, Ms.
 12 Cynthia M. Shultz, MD, Mr. Patrick Philpot, DO, Ms. Dianne Jacobetz, MD, Mr. Shadi N.
 13 Malaeb, MD, Ms. Marilyn Ekonomidis, MD, Mr. Christopher Gilbert, MD, Ms. Hannah
 14 Milthorpe, MD, Ms. Beth Maisel, MD, Ms. Denese Brown, MD, Ms. Kimberly Costello,
 15 DO, Mr. Gilberto Santiago, MD, Ms. Chaminie Wheeler, MD, Mr. Steve Lanshe, Esq.,
 16 Mr. Robert L. Wax, Esq., Ms. Darla Frack, Ms. Dawn Hoffman, "Hospital Leadership
 17 Team", Mr. Jerry Hric, MD, "Security Guard 'Freddy'", "Security Guard 'Joe'", "Security
 18 Guard 'Nate'", "Security Guard(s) 'Unknown'", "Security Supervisor 'Unknown'", "Head
 19 of Hospital Security 'Unknown'", Anderson Labs, and Ms. Emily Miller, MD to apply to
 20 each claim in which one of these Defendants are listed:

21 3573. (1) In each postpartum hospital room and NICU pod, in poster form, in a
 22 conspicuous location, Defendant St. Luke's Hospital and its Affiliates, Agents,

1 Employees, and Assigns should place full notice of policies and procedures regarding
2 consent for treatment and appeals processes for when parental consent conflicts with
3 the intent of the medical provider(s); such notice shall be provided in every postpartum
4 hospital room and NICU pod.

5 3574. (2) Defendant St. Luke's Hospital and its Affiliates, Agents, Employees, and
6 Assigns should at all times maintain an independent hotline which can be used by staff
7 or patients to report abuse or misconduct on the part of St. Luke's Hospital and its
8 Affiliates, Agents, Employees, and Assigns to be internally investigated and results
9 communicated to the reporting party; such hotline should be maintained off the medical
10 provider premises from which the complaint is being asserted.

11 3575. (3) Each individual Defendant and their superiors who had active knowledge of
12 the Smith Family situation should be mandated to immediately disassociate from one
13 another in all professional capacities; this disassociation extends to any future letters of
14 recommendation provided by any medical provider to any Defendant employee, agent
15 or assign.

16 3576. (4) All Defendants with a license to practice medicine, to practice law, or to
17 operate a medical facility or any portion thereof should immediately have such licenses
18 revoked permanently and without ability to have such licenses reinstated in the future.

19 3577. (5) All Defendant facilities shall have any licenses required for the facility to
20 operate temporarily suspended until St. Luke's staff has been appropriately trained on
21 the proper legal procedure for separating a parent or parents from their child.

1 3578. (6) All Defendants that engaged in child abuse via the practice of unnecessary
2 medical care on newborn baby J.A.S. should be barred from providing any further care,
3 treatment or service to children because of their acts of child abuse.

4 3579. (7) Defendants St. Luke's Hospital and its Affiliates, Agents, Employees, and
5 Assigns, and Defendants Anderson Labs and Emily Miller, MD should be barred from
6 using drug tests that do not differentiate between amphetamine and methamphetamine
7 for any reason.

8 3580. (8) Because Defendants St. Luke's Hospital and its Affiliates demonstrated
9 egregious levels of mistrust, all such Defendants and affiliates should be barred from
10 using any advertisement including the word "Trust" or implying in any way that
11 Defendants can be trusted.

12 3581. (9) Any security personnel assigned by Defendants to a situation in which a
13 breastfeeding mother is present must be female by sex or identify with the female
14 gender; in no such circumstances shall male security guards be assigned to monitor
15 breastfeeding mothers.

16 3582. (10) Defendants St. Luke's Hospital and its Affiliates must provide good cause in
17 writing to any patient or guardian of a patient who will be placed under security
18 monitoring explaining why and under what authority.

19 3583. (11) Whenever Defendants St. Luke's Hospital and its Affiliates considers the
20 termination of parental rights Defendant must first provide the option to transfer the
21 patient to a separate hospital of the patient or guardian's choice for a second opinion
22 without delay.

1 3584. (12) All individual Defendants holding professional licenses or empowered by a
2 professional licensing agency should be required to be investigated by their respective
3 licensing authority for moral, ethical and legal violations as relates to the Smith family
4 case.

5 3585. (13) All Defendants herein should be thoroughly trained and annually reeducated
6 on when it is appropriate and legal to disclose confidential medical information outside
7 the doctor-patient relationship.

8 3586. (14) All Defendants herein should be thoroughly trained by an independent third-
9 party organization at the cost of the Defendants on how to treat all patients and their
10 family with appropriate dignity and respect in all situations, regardless of how sensitive
11 or emotionally charged.

12 3587. (15) Defendants St. Luke's Hospital and its Affiliates should provide all forms and
13 disclaimers in writing to all patients in physical paper form, not electronically, prior to
14 requiring any patient signature or endorsement, and a physical copy of any form signed
15 should be immediately provided to the patient.

16 3588. (16) Full medical records should be provided upon request in one conspicuous
17 location—not in portions, segments, or sections—but as one whole document for easy
18 review.

19 3589. (17) Hospital discharge papers should provide names and titles of all medical
20 providers and hospital staff that were responsible for the care and maintenance of the
21 patients during the period of their medical treatment (including all administrators that
22 made decisions affecting any patient's situation).

1 3590. In addition to any requested damages aforementioned listed in any particular
2 claim, Plaintiffs respectfully request the following policy changes of the Defendants
3 Northampton County, Bethlehem Township, and all of their subordinate officers:

4 3591. (1) Each Defendant officer and their superiors who had active knowledge of the
5 Smith Family situation should be immediately dismissed from their positions at the
6 Bethlehem Police Department;

7 3592. (2) That each dismissed employee should lose the value of any accrued benefits
8 in association with the Commonwealth of Pennsylvania that would extend to the former
9 employees after dismissal;

10 3593. (3) An independent criminal investigation by the Commonwealth into not only the
11 role the Bethlehem Police Department played in the Smith Case, but into the overall
12 patterns and practices of the Bethlehem Police Department to ensure that all employees
13 and staff are indeed trained well enough for the weight of the positions that they bear
14 concerning matters of maintaining family integrity;

15 3594. (4) Northampton County and/or Bethlehem Township should be forced to hire an
16 independent evaluator(s) to investigate training for employees in the Bethlehem Police
17 Department to determine if employees know what laws they are actually enforcing, and
18 what they actually have jurisdiction over;

19 3595. (5) Require police to investigate beyond the scope of an alleged drug test into
20 whether or not there are actual signs or symptoms of methamphetamine abuse and
21 withdrawal in the accused mother and child prior to enforcement of separation of a
22 parent and child; and,

23 3596. (6) Any other meritorious remedy that this Honorable Court sees fit.

1 3597. In addition to any requested damages aforementioned listed in any particular
2 claim, Plaintiffs respectfully request the following policy changes of the Defendant
3 Monroe County and all of their subordinate Officer of Children and Youth Services
4 employees:

5 3598. (1) Each Defendant involved in requesting drug testing from Plaintiff Mrs. Smith
6 be immediately dismissed from their positions at Monroe County Children and Youth
7 Services;

8 3599. (2) That each dismissed employee should lose the value of any accrued benefits
9 in association with the Commonwealth of Pennsylvania that would extend to the former
10 employees after dismissal;

11 3600. (3) An independent criminal investigation by the Commonwealth into not only the
12 role CYS played in the Smith Case, but into the overall patterns and practices of
13 Monroe County CYS to ensure that all employees and staff are indeed trained well
14 enough for the weight of the positions that they bear;

15 3601. (4) Monroe County be forced to hire an independent evaluator(s) to investigate if
16 training for employees in the Monroe County Office of Children and Youth Services to
17 determine if employees know what laws they are actually enforcing, and what they
18 actually have jurisdiction over;

19 3602. (5) Require all Commonwealth CYS employees to read *Miranda* or *Miranda-like*
20 rights to individuals being investigated by CYS at the initiation of an investigation:

21 3603. (6) Prohibit threats of further uses of force against a family if a mother or father
22 refuses to comply with a drug test (*i.e.*, CYS cannot call the police because of refusal to
23 take a drug test):

1 3604. (7) Provides a public defender to any Monroe County citizen whom Monroe
2 County CYS claims a need to physically see children associated with a particular
3 allegation;

4 3605. (8) Any Pennsylvania citizen should have access to an immediate appeals
5 process for technical violations of PA statutory, constitutional, and common laws
6 concerning Children and Youth Services and while such an appeals process is being
7 undergone the claim at hand should be investigated by a magisterial court, during which
8 period all investigations into the individual(s) being conducted by CYS should be
9 suspended until a valid judgement from the magisterial court allowing the case to
10 proceed if technical legal violations were not actually found by the magistrate;

11 3606. (9) Any other meritorious remedy that this Honorable Court sees fit.

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5 **VERIFICATION**

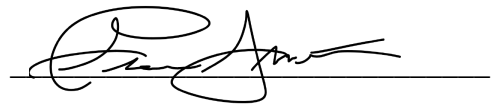
6
7 I, Michael O. Smith, J.D., have reviewed the attached complaint and hereby verify that the
8 information contained therein is true and correct to the best of my knowledge and/or information
9 and belief, subject to the penalties imposed by 18 Pa.C.S § 4904 relating to unsworn falsification
10 to authorities.
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Michael O. Smith

Michael O. Smith, J.D., Plaintiff

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5 **VERIFICATION**

6
7 I, Grace Smith, Esq., have reviewed the attached complaint and hereby verify that the
8 information contained therein is true and correct to the best of my knowledge and/or information
9 and belief, subject to the penalties imposed by 18 Pa.C.S § 4904 relating to unsworn falsification
10 to authorities.
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14
15 A handwritten signature in black ink, appearing to read 'Grace Smith', is written over a horizontal line.

16 Grace Smith, Esq., Plaintiff
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